AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

7-15-88
Vol. 53 No. 136
Pages 26751-26986

Federal Register

Friday
July 15, 1988

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months in paper form, or $188.00 per year, or $94.00 for six months in microfiche form, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 52 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register

Vol. 53, No. 136

Friday, July 15, 1988

Agricultural Marketing Service
RULES
Lemons grown in California and Arizona, 26752
Milk marketing orders:
Chicago Regional, 26758
Peanuts, domestically produced, 26754
Potatoes grown in Idaho and Oregon, 26752
PROPOSED RULES
Dates (domestic) produced or packed in California, 26784
Pears, plums, and peaches grown in California, 26782
Plant Variety Protection Act; certification fee increase, 26781

Agriculture Department
See Agricultural Marketing Service; Commodity Credit Corporation; Federal Grain Inspection Service; Forest Service; Soil Conservation Service

Blind and Other Severely Handicapped, Committee for Purchase From
See Committee for Purchase From the Blind and Other Severely Handicapped

Canada and United States-International Joint Commission
See International Joint Commission-United States and Canada

Civil Rights Commission
NOTICES
Native American civil rights issues; hearing, 26842
Meetings; State advisory committees:
Colorado, 26843
New Hampshire, 26843
West Virginia, 26843

Coast Guard
RULES
Ports and waterways safety:
Patuxent River, Upper Chesapeake Bay, MD; safety zone, 26771
Regattas and marine parades
Detroit Jazz Festival Fireworks Display, 26770

Commerce Department
See National Bureau of Standards; National Oceanic and Atmospheric Administration; National Technical Information Service

Committee for Purchase From the Blind and Other Severely Handicapped
NOTICES
Procurement list, 1988:
Additions and deletions, 26846, 26847
(2 documents)

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Pakistan, 26846

Commodity Credit Corporation
RULES
Loan and purchase programs:
Cotton bale packaging materials 1988 specifications, 26761

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 26930

Defense Department
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 26847
(2 documents)

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Cedars of Lebanon Apothecary, 26896
Curtwright, Lewis K., D.O., 26897
Smithkline & French Laboratories, 26898
Smithkline Chemicals, 26899
Worley, Wyeth Hardy, D.D.S., 26899

Economic Regulatory Administration
NOTICES
Natural gas exportation and importation:
Encor Energy (America) Inc., 26848

Education Department
RULES
Elementary and secondary education:
Area affected by Federal activities, etc.—
Assistance for local educational agencies impact aid programs, 26772
Special education and rehabilitation services:
Older blind individuals; independent living services, 26976

Employment and Training Administration
NOTICES
Research, evaluation, pilot, and demonstration projects program; 1988 PY, 26900

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 26904

Energy Department
See Economic Regulatory Administration; Federal Energy Regulatory Commission; Western Area Power Administration

Environmental Protection Agency
PROPOSED RULES
Water quality standards:
Washington, 26968

NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 26857
Weekly receipts, 26858
Superfund; response and remedial actions, proposed settlements, etc.:
A.Y. McDonald Site, IA, 26858
Babb Drum Site, SC, 26859
Water pollution control:
Disposal site determinations—
Hurricane Creek, Bacon County, GA, 26859

Equal Employment Opportunity Commission
PROPOSED RULES
Age discrimination in employment:
Early retirement plans, 26788
Employee benefit plans, 26789

Executive Office of the President
See Presidential Documents

Family Support Administration
NOTICES
Grants; availability, etc.:
Low income home energy assistance programs—
Technical assistance and training discretionary authority, 26866

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, et al., 26762
British Aerospace, 26763
McDonnell Douglas, 26765
PROPOSED RULES
Airworthiness directives:
Boeing, 26785
McDonnell Douglas, 26787

Federal Communications Commission
PROPOSED RULES
Radio and television broadcasting:
Application for construction permit for commercial broadcast stations, 26798
NOTICES
Common carrier services:
Public mobile services—
Cellular markets applications filing information (Pittsburgh, PA), 26863
Radio broadcasting:
FM vacant channel applications; universal window filing period, 26864
Rulemaking proceedings; petitions filed, granted, denied, etc., 26865

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Portland General Electric Co. et al., 26849
Toledo Edison Co. et al., 26850
Natural gas certificate filings:
Pelican Interstate Gas System et al., 26853
United Gas Pipeline Co. et al., 26855
Natural gas transportation network, auction; laboratory experiments colloquium, 26850
Applications, hearings, determinations, etc.:
Transcontinental Gas Pipe Line Corp., 26857

Federal Grain Inspection Service
RULES
Grain standards:
Lentils, 26751

Federal Maritime Commission
NOTICES
Agreements filed, etc., 26865
Meetings; Sunshine Act, 26930

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 26930
(2 documents)

Fish and Wildlife Service
PROPOSED RULES
Endangered Species Convention:
American alligators harvested in 1988; export, 26799
American ginseng harvested in 1988-1990; export, 26802
NOTICES
Comprehensive conservation plan/environmental statements; availability, etc.:
Alaska Peninsula National Wildlife Refuge, AK, 26888

Food and Drug Administration
RULES
Color additives:
D&C Red No. 19 and D&C Orange No. 17, 26768
D&C Red Nos. 8 and 9, 26766
NOTICES
Color additive petitions:
Cosmetic, Toiletry & Fragrance Association, Inc., 26881, 26884, 26886
(3 documents)

Forest Service
NOTICES
Land and resource management planning; forest planning revisions and amendments clarification, 26807

General Services Administration
RULES
Federal property management:
Motor equipment management—
Passenger carriers between residence and place of employment; official use, 26773
Transportation documentation and audit—
Prepayment transportation audit procedures; correction, 26779
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 26847
(2 documents)

Geological Survey
NOTICES
Grants; availability, etc.:
Water resources research program, 26889

Health and Human Services Department
See also Family Support Administration; Food and Drug Administration
NOTICES
Agency information collection activities under OMB review, 26865

Interior Department
See Fish and Wildlife Service; Geological Survey; Land Management Bureau; Minerals Management Service; Reclamation Bureau

International Joint Commission-United States and Canada
NOTICES
Cabin Creek, BC, Canada; mine development, water quality, and quantity implications, 26894

Interstate Commerce Commission
NOTICES
Motor carriers:
Agricultural cooperative transportation filing notices, 26894
Finance applications, 26895

Justice Department
See also Drug Enforcement Administration
NOTICES
Senior Executive Service:
Performance Review Boards; membership, 26895

Labor Department
See Employment and Training Administration; Employment Standards Administration; Mine Safety and Health Administration; Occupational Safety and Health Administration; Pension and Welfare Benefits Administration

Land Management Bureau
PROPOSED RULES
Coal managment:
Coal product valuation and related topics, 26942
NOTICES
Alaska Native claims selection:
Chevak Co., 26890
Environmental statements; availability, etc./management framework plans, etc.:
Green River Resource Area, OR, 26891
Environmental statements; availability, etc.:
Vegetation treatment program; thirteen contiguous western States, 26890
Motor vehicles; off-road vehicle designations:
Alaska, 26891, 26892
(2 documents)
Realty actions; sales, leases, etc.:
Nevada, 26892

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
Blue Diamond Coal Co., 26905
Helvetia Coal Co., 26905
Mullis Coal Co., 26906
Quarto Mining Co., 26906
Summit Coal Co., 26907

Minerals Management Service
PROPOSED RULES
Royalty management:
Coal product valuation and related topics, 26942

National Aeronautics and Space Administration
RULES
Acquisition regulations:
Miscellaneous amendments, 26932
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 26847
(2 documents)

National Bureau of Standards
NOTICES
National Fire Codes:
Fire safety standards, 26844
Technical Committee reports, 26843

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
High seas salmon fishery off Alaska, 26779
NOTICES
Permits:
Marine mammals, 26845

National Technical Information Service
NOTICES
Patent licenses, exclusive:
Liposome Co. Inc., 26846

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Babcock & Wilcox, 26914
Meetings:
Nuclear Waste Advisory Committee, 26915
Applications, hearings, determinations, etc.:
Carolina Power & Light Co., 26915

Occupational Safety and Health Administration
PROPOSED RULES
Safety and health standards, etc.:
Hazard-free workplaces; safety and health guidance, 26790
State plans; development, enforcement, etc.:
Wyoming, 26797

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; class exemptions:
Residential mortgage financing arrangements; prohibited transaction exemption amendments; correction, 26907
Employee benefit plans; prohibited transaction exemptions:
AmeriTrust Co. et al., 26908
Consolidated Electrical Distributors, Inc., et al., 26911

Personnel Management Office
PROPOSED RULES
Health benefits, Federal employees:
Credit for CHAMPUS coverage for purpose of continuing an FEHB enrollment during retirement, 26781

Presidential Documents
PROCLAMATIONS
Special observances:
Captive Nations Week (Proc. 5840), 26984
EXECUTIVE ORDERS
Committees; establishment, renewal, termination, etc.:
Railroad labor dispute; emergency board (EO 12646), 26986

Public Health Service
See Food and Drug Administration

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Boulder Canyon Project, AZ/NV, 26893

Research and Special Programs Administration
NOTICES
Hazardous materials:
Applications; exemptions, renewals, etc., 26926, 26928 (2 documents)

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
New York Stock Exchange, Inc., 26916
Pacific Clearing Corp., 26917
Applications, hearings, determinations, etc.:
Public Facility Loan Trust, 26918

Selective Service System
NOTICES
Conflict of interests, 26925

Small Business Administration
NOTICES
Meetings; regional advisory councils:
Louisiana, 26926
Applications, hearings, determinations, etc.:
Sterling Commercial Capital, Inc., 26926

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Magnolia Cemetery, AR, 26842

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard; Federal Aviation Administration; Research and Special Programs Administration

Treasury Department
NOTICES
Agency information collection activities under OMB review, 26929 (2 documents)

Western Area Power Administration
NOTICES
Environmental statements; availability, etc.:
Boulder Canyon Project, AZ/NV, 26893

Separate Parts In This Issue

Part II
National Aeronautics and Space Administration, 26932

Part III
Department of the Interior, Bureau of Land Management and Minerals Management Service, 26942

Part IV
Environmental Protection Agency, 26968

Part V
The President, 26984

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:
5840 26984

Executive Orders:
12646 26986

5 CFR

Proposed Rules:
890 26781

7 CFR
68 26751
910 26752
945 26752
998 26754
1030 26758
1427 26761

Proposed Rules:
180 26781
917 26782
987 26784

14 CFR
39 (3 documents) 26762, 26764, 26765

Proposed Rules:
39 (2 documents) 26785, 26787

21 CFR
74 (2 documents) 26766, 26768
81 (2 documents) 26766, 26768
82 (2 documents) 26766, 26768

29 CFR

Proposed Rules:
1625 (2 documents) 26788, 26789
1910 26790
1915 26790
1918 26790
1953 26797

30 CFR

Proposed Rules:
202 26942
203 26942
206 26942
212 26942

33 CFR
100 26770
165 26771

34 CFR
222 26772
367 26976

40 CFR

Proposed Rules:
131 26968

41 CFR
101-6 26773
101-41 26779

43 CFR

Proposed Rules:
3480 26942

47 CFR

Proposed Rules:
73 26798

48 CFR
1801 26932
1804 26932
1805 26932
1807 26932
1808 26932
1815 26932
1816 26932
1817 26932
1822 26932
1824 26932
1828 26932
1832 26932
1839 26932
1842 26932
1845 26932
1852 26932
1870 26932

50 CFR
674 26779

Proposed Rules:
23 (2 documents) 26799, 26802

Rules and Regulations

Federal Register
Vol. 53, No. 136
Friday, July 15, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

United States Standards for Lentils

AGENCY: Federal Grain Inspection Service, USDA.[1]
ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS or Service) is revising the United States Standards for Lentils to include a U.S. No. 3 Lentil grade designation. The new grade level is being established to bring the U.S. lentil standards in line with standards used by major lentil exporters in the world market.

EFFECTIVE DATE: August 1, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Resources Management Division, USDA, FGIS, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090-6454, Telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

[1] The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621-1627), concerning inspections and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.5).

Regulatory Flexibility Act Certification

W. Kirk Miller, Administrator, FGIS, has determined that this final rule does not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most users of the inspection service do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities.

Final Action

On June 6, 1988, FGIS proposed to revise Subpart H-United States Standards for Lentils, of the Part 68 regulations to include a U.S. No. 3 Lentil grade designation. The American Dry Pea and Lentil Association (ADPLA), which represents the majority of those persons using the United States lentil standards, had proposed that an additional grade be added to the current lentil standards. Currently, U.S. competitors in the lentil market are effectively selling on the world market a quality lentil slightly below the current U.S. No. 2 grade. The Canadians, for example, label this quality as a Number 3 Canada Lentil. Under the U.S. standards, the same quality is labeled U.S. Sample grade. In order to effectively compete in the world market, ADPLA had requested that FGIS establish a U.S. No. 3 Lentil grade. ADPLA had recommended that the maximum amount of defective lentils total, heat-damaged lentils, and skinned lentils be set at 5.0 percent, 1.0 percent and 10.0 percent, respectively. Skinned lentils result from handling and heat-damaged lentils may occur through drying at too high of a temperature or during storage. All other limits would remain the same as the limits for U.S. No. 2 lentils.

The ADPLA requested that the change be effective by August 1, 1988, so that the grade designation can be used to market the 1988 lentil crop. Accordingly, a 15 day comment period was deemed adequate in order to have new standards, if adopted, in effect at the beginning of the crop year to facilitate the marketing of lentils. Interested parties were invited to participate in the rulemaking process by submitting written comments on the proposed rule. During the comment period, a total of four comments were received. The four commenters included the United States of America Dry Pea and Lentil Council, the American Dry Pea and Lentil Association, the Washington Association of Dry Pea and Lentil Producers, and the Washington State Department of Agriculture. The commenters who represent the majority of those persons using the United States lentil standards all supported the proposed new grade designation.

In addition to the above, a minor change is being made to an agency reference in § 68.605.

It has been determined that in order to facilitate the marketing of lentils and in order that the grade designation can be used to market lentils at the beginning of the 1988 crop year, good cause is found pursuant to the administrative procedures provisions in 5 U.S.C. 553 to make this final rule effective on August 1, 1988, less than 30 days after publication in the **Federal Register.**

List of Subjects in 7 CFR Part 68

Administrative practice and procedure, Agricultural commodities, Lentils.

For reasons set forth in the preamble, 7 CFR Part 68 is amended as follows:

PART 68—REGULATIONS AND STANDARDS FOR INSPECTION AND CERTIFICATION OF CERTAIN AGRICULTURAL COMMODITIES AND THEIR PRODUCTS

Subpart H—United States Standards for Lentils

1. The authority citation for Part 68 is revised to read as follows:

Authority: Secs. 202-208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

§ 68.605 [Amended]

2. Section 68.605 is amended by changing the word "Division" to read "Service."

3. Section 68.607 is revised to read as follows:

§ 68.607 Grades and grade requirements for dockage-free lentils. (See also § 68.609.)

Grade	Maximum limits of—						Minimum requirements—color
	Defective lentils			Foreign material			
	Total (percent)	Weevil-damaged lentils (percent)	Heat-damaged lentils (percent)	Total (percent)	Stones (percent)	Skinned lentils (percent)	
U.S. No. 1	2.0	0.3	0.2	0.2	0.1	4.0	Good.
U.S. No. 2	3.5	0.8	0.5	0.5	0.2	7.0	Fair.
U.S. No. 3	5.0	0.8	1.0	0.5	0.2	10.0	Fair.

U.S. Sample grade: U.S. Sample grade shall be lentils which—
(a) Do not meet the requirements for the grades U.S. 1, 2 or 3; or
(b) Contain more than 14.0 percent moisture, live weevils or other live insects, metal fragments, broken glass, or a commercially objectionable odor; or
(c) Are materially weathered, heating or distinctly low quality.

Date: July 6, 1988.

W. Kirk Miller,

Administrator.

[FR Doc. 88–15924 Filed 7–14–88; 8:45 am]

BILLING CODE 3410-EN-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 622]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 622 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 400,000 cartons during the period July 17 through July 23, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 622 (§ 910.922) is effective for the period July 17 through July 23, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action on the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing order issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (17 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared polity of the Act.

This regulation is consistent with the marketing policy for 1987–88. The committee met publicly on July 12, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a 7–5 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.922 is added to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 910.922 Lemon Regulation 622.

The quantity of lemons grown in California and Arizona which may be handled during the period July 17, 1988, through July 23, 1988, is established at 400,000 cartons.

Dated: July 13, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–16089 Filed 7–14–88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 945

Idaho-Eastern Oregon Potatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 945 for the 1988–89 fiscal period.

Authorization of this budget will allow the Idaho-Eastern Oregon Potato Committee to incur expenses necessary to administer this program. This action will designate that funds to administer this program will be derived from assessments on handlers.

EFFECTIVE DATES: August 1, 1988 through July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–2431.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 945 (7 CFR Part 945) regulating the handling of potatoes grown in designated counties in Idaho and Malheur County, Oregon. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of Idaho-Eastern Oregon potatoes under this marketing order, and approximately 3,650 potato producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The marketing order requires that the assessment rate for a particular fiscal period shall apply to all assessable potatoes handled from the beginning of such period. An annual budget of expenses is prepared by the committee and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of potatoes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget.

The recommended assessment rate is derived by dividing anticipated expenses by expected shipments of potatoes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

A proposed rule was published in the **Federal Register** (53 FR 19000, May 26, 1988). That document contained a proposal to add § 945.241 to establish expenses of $76,900 and an assessment rate of $0.0026 per hundredweight for the Idaho-Eastern Oregon Potato Committee for the fiscal year beginning August 1, 1988. The proposal was based on an initial budget recommendation made in March. That rule provided that interested persons could file comments through June 27, 1988.

One comment was received from the Idaho-Eastern Oregon Potato Committee. That comment was based on an unanimous vote at a meeting held on June 8, 1988, when the recommended budget was revised to $82,200. The principal addition to the budget is the purchase of a computer, printer and software for $4,320. The assessment rate recommendation of $0.0026 per hundredweight of potatoes was unchanged. That rate is the maximum permitted under the order, and has remained the same for over two decades. The revenue from assessments is revised to be 21 million hundredweight at $54,600, instead of 20 million hundredweight at $52,000. The fees for services increases from $1,200 to $3,600. Assessment income ($54,600), fees ($3,600), interest ($1,000), and reserve ($23,000) will be adequate for budgeted expenses. By the end of the fiscal period the reserve fund is expected to total $250.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is found that the specified expenses are reasonable and likely to be incurred, and that such expenses and the specified assessment rates to cover such expenses will tend to effectuate the declared policy of the Act.

This budget and assessment rate should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 945

Marketing agreements and orders, Potatoes (Idaho and Oregon).

For the reasons set forth in the preamble, 7 CFR Part 945 is amended as follows:

PART 945—POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR Part 945 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 945.241 is added to read as follows (this section prescribes the annual assessment rate and will not be published in the Code of Federal Regulations):

§ 945.241 Expenses and assessment rate.

Expenses of $82,200 by the Idaho-Eastern Oregon Potato Committee are authorized, and an assessment rate of $0.0026 per hundredweight of assessable potatoes is established for the fiscal period ending July 31, 1989. Unexpended funds may be carried over as a reserve.

Dated: July 12, 1988.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–15998 Filed 7–14–88; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 998

[Docket No. AMS-FV-88-066]

Marketing Agreement 146 Regulating the Quality of Domestically Produced Peanuts; Incoming and Outgoing Quality Regulations and Terms and Conditions of Indemnification for 1988 Crop Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the current incoming and outgoing quality regulations and the terms and conditions of indemnification for 1988 crop peanuts. Two changes will be made in current incoming quality regulations. The first change will limit the quantity of loose shelled kernels in farmers' stock peanuts which can be acquired by handlers to improve the quality of storage peanuts and peanuts ultimately sold for edible use. The second will allow handlers to acquire peanuts with higher moisture levels in recognition of industry practices. With regard to outgoing quality regulations, the screen sizes used in grading minimum quality peanuts will be increased to remove small kernels. Such kernels tend to be immature, contribute to quality problems, and are not as flavorful as larger kernels. These changes are intended to improve the minimum quality of peanuts available for edible channels. The final change regarding indemnification will streamline the clearance procedures used in making indemnification payments to handlers incurring losses in disposing of rejected peanuts.

EFFECTIVE DATE: Applicable to the 1988 crop peanuts handled after July 15, 1988.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–475–3919.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement 146 [7 CFR Part 998; 53 FR 20291, June 3, 1988], regulating the quality of domestically produced peanuts. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 67 handlers of peanuts subject to regulation under Peanut Marketing Agreement 146 [7 CFR Part 998], and there are about 46,950 peanut growers in the 16 states covered under the program. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. Some of the handlers signatory to the agreement are small entities, and a majority of the growers may be classified as small entities.

There are three major peanut production areas in the United States: (1) Virginia-Carolina, (2) Southeast, and (3) Southwest, covered under the agreement. These areas cover 16 states. The Virginia-Carolina area (primarily Virginia and North Carolina) usually produces about 18 percent of the crop. The Southeast area (primarily Georgia, Florida and Alabama) usually produces about two-thirds of the crop. The Southwest (primarily Texas, Oklahoma, and New Mexico) produces about 15 percent of the crop. Based upon the most current information, peanut production in 1987 is expected to total 3.6 billion pounds, 3.1 percent less than 1986, and 18.6 percent less than the record 1984 production of 4.4 billion pounds. The 1987 production value is expected to be $1.02 billion; the 1986 production value was $1.07 billion.

The objective of the agreement is to insure that only wholesome peanuts enter edible market channels. Since aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products.

The peanut marketing agreement plays a very important role in the industry's quality control efforts. It has been in place since 1965 with practically all U.S. shellers participating. Requirements established pursuant to the agreement require farmers' stock peanuts with visible *Aspergillus Flavus* mold (the principal producer of aflatoxin) to be diverted to nonedible uses. Each lot of peanuts for edible use must be officially sampled and chemically tested for aflatoxin by the Department of Agriculture or in laboratories approved by the Peanut Administrative Committee. The committee works with the Department of Agriculture in administering the marketing agreement program. The sampling and chemical analysis quality control programs are administered by the Department of Agriculture. Having complied with these requirements, provision is made for indemnification of sheller losses if the committee or Food and Drug Administration (FDA) deems the peanuts unsuitable because of aflatoxin. All indemnification and administration costs are paid by assessments levied on shellers signatory to the agreement.

The incoming quality regulations specify the quality of farmers' stock peanuts which handlers may purchase from producers. Handlers are required to purchase only good quality, wholesome peanuts for edible products. The outgoing quality regulations require shellers to mill peanuts to meet certain quality specifications before such peanuts can be sold to edible outlets. Foreign material and damaged and immature peanuts are removed in this operation. Each lot of milled peanuts also must be sampled and the samples chemically analyzed for aflatoxin. If the chemical assay shows the lot to be positive as to aflatoxin, the lot is not allowed to go to edible channels. Lower quality peanuts are crushed for oil and meal. The end result is that only good quality peanuts end up in human consumption outlets.

Notice of the changes in the incoming and outgoing quality regulations and indemnification procedures were unanimously recommended by the committee for 1988 crop peanuts and were published in the June 9, 1988, issue of the **Federal Register** [53 FR 21668]. Comments were invited until June 24, 1988. Several comments were received for and against the proposed changes, and some commenters suggested modifications. The comments are discussed thoroughly later in this final rule.

The 1988 incoming quality regulations will be changed in two ways from the 1987 regulations. Paragraph (d)(1) of § 998.100 will be changed to provide that no handler shall receive or acquire farmers' stock peanuts containing more than 14.49 percent loose shelled kernels, unless the peanuts are held separately until milled or shipped directly to a plant for prompt shelling. This change is intended to improve the quality of lots of peanuts milled for human consumption by limiting the quantity of loose shelled kernels in each lot. Experience has

shown that loose shelled kernels tend to have a higher incidence of aflatoxin than other components of farmers' stock peanuts. Loose shelled kernels are peanut kernels or portions of kernels completely free of their hulls and found in deliveries of farmers' stock peanuts.

The second change in the current incoming regulations will allow handlers to acquire or receive peanuts which have been dried to not more than 10.49 percent moisture. Under paragraph (b)(1) of § 998.100 of the current incoming quality regulations, generally peanuts must be dried to 10.00 percent moisture and moisture determinations on farmers' stock peanuts are required to be rounded to the nearest whole number, except that when the moisture level is 10.01 percent to 10.49 percent, the moisture determination is required to be carried to the hundredths place. According to the committee, this requirement has placed an undue burden on producers because their peanut drying equipment is not engineered to the point of drying peanuts on the farm with a maximum of 10 percent moisture without overdrying. This has resulted in an excessive amount of splitting during the milling process, which is not desirable. The change in the moisture limit, and the elimination of the exception concerning moisture determinations for farmers' stock peanuts to be carried to the hundredths place is expected to correct this problem without causing quality problems during storage.

A major user of peanuts favored the proposed incoming actions as a means of minimizing the risk of aflatoxin contamination in peanuts used in the production of peanuts and peanut products. This user, however, favored lowering the maximum limit for loose shelled kernels below the 14.49 percent level proposed. In his comment, this user indicated that industry operating procedures suggested a level closer to a five percent level.

This is the first time that the committee has recommended setting such a limit on loose shelled kernels. The committee believes the 14.49 percent level is a reasonable tolerance because it will foster a measure of quality control without unduly burdening producers and handlers. It is expected that as experience is gained in applying this tolerance, adjustments may be made to the tolerance to further advance the objective of fostering consumer confidence in the wholesomeness of edible peanuts.

Several changes were proposed in the 1988 outgoing quality regulations from those in effect for 1987 crop peanuts. One proposed change increased the sizes of the slotted screens used for determining fall through (fall through includes sound split and broken kernels and whole kernels which pass through specified screen openings and must be disposed of in inedible outlets) in minimum quality whole kernels. In addition, the table in paragraph (a) of § 998.200 was proposed to be changed to specify U.S. No. 1 screen-sizes (slotted) for all types of whole peanuts, including those in No. 2 Virginia. Currently, only screens with round openings are specified and used for determining fall through for split, broken, and whole kernels of No. 2 Virginia type peanuts.

The minimum size screen openings for whole Runner type peanuts were proposed to be changed from a $^{13}/_{64}$ x $^{3}/_{4}$ inch slot to a $^{16}/_{64}$ x $^{3}/_{4}$ inch slot, for whole Spanish and Valencia type peanuts from a $^{13}/_{64}$ x $^{3}/_{4}$ inch slot to a $^{15}/_{64}$ x $^{3}/_{4}$ inch slot, and for whole Virginia type, including No. 2 Virginia peanuts, from a $^{14}/_{64}$ x 1 inch slot to a $^{15}/_{64}$ x 1 inch slot. With these changes, No. 2 Virginia type peanuts would be graded using a $^{17}/_{64}$ inch round screen for split and broken kernels and $^{15}/_{64}$ x 1 inch slotted screen for whole kernels. The proposed use of slotted screens in determining fall through of whole kernels in No. 2 Virginias would cause all Virginia type peanuts to be graded similarly.

The screen opening changes were proposed to improve the minimum quality available for edible trade channels. Research data which has been presented by scientists at North Carolina State University and the National Peanut Research Laboratory in Dawson, Georgia, clearly identify damaged kernels, loose shelled kernels and small immature kernels as the highest risk components in *Aspergillus Flavus* mold contamination. The screen size changes for all types of peanuts would eliminate the small kernels, which tend to be immature, from edible channels. This would lessen the chances of unwholesome peanuts entering such channels and would improve the flavor of peanuts and peanut products, according to the committee and the researchers.

In comments, representatives for some peanut product manufacturers and some peanut processors contended that the screen size changes (i.e., the changes in the minimum size requirements) would eliminate a sizable volume of peanuts which are currently being used, and raise peanut prices. Processors also indicated that this action would cause them financial problems because they have made long term commitments into 1988–89 to supply peanut butter and other products using the peanuts to be removed from edible use. The proponents of the action acknowledged that some impact on supply will occur. However, they indicated that this action continues the industry's goal of providing wholesome peanuts to edible channels that can be used with confidence. The intent of removing small whole kernels from edible channels is to eliminate a category of peanuts that is known to be susceptible to *Aspergillus Flavus* mold and aflatoxin.

With regard to the supply and price conditions, these changes are expected to remove five percent or less of the 1988 crop from edible channels based on shipments from 1976 to 1985. Hence, the effect of these changes on the total supply of edible quality peanuts for domestic use is expected to be minimal and no significant effect on the price of better quality peanuts is expected because of these changes.

Peanut yields have been sharply below trend or the past two years. This has resulted in short crops. With these short crops, prices for the better grades of shelled peanuts advanced sharply from the two preceding years when more normal crops were harvested. The prices for low quality peanuts showed less response to the smaller supplies so the difference in prices between better quality U.S. No. 1 peanuts and minimum standard peanuts increased. In the 1984 and 1985 seasons when yields were near normal, the difference in f.o.b. prices between U.S. No. 1 runner type peanuts and $^{14}/_{64}$ runners (i.e., the peanuts to be eliminated from edible channels by this action) was in the range of 1 to 9 cents per pound. With the short crops in 1986 and 1987, this difference increased to 17 to 24 cents per pound. Runner type peanuts are the major commercial type produced, comprising about 75 percent of the production.

If yields return to more normal levels in 1988, production should be sharply higher than the short crops in 1986 and 1987. Since the yields in 1986 and 1987 were both more than 15 percent lower than the average yield in 1984 and 1985, a return to more normal yields would have a much greater impact on supplies than the elimination of whole kernels which are smaller than the U.S. No. 1 size. As indicated in the proposal, in the last 25 years, dry wheather has not caused similar reductions in yields for three consecutive years.

One peanut butter processor acknowledge the potential for aflatoxin problems with the smaller peanut kernels indicating that his firm has all such peanuts blanched to assure their quality for edible use. All peanuts for peanut butter are blanched during some

part of the manufacturing process. However, blanching itself does not remove aflatoxin; it merely makes aflatoxin removal easier by exposing the surface discoloration associated with the problem.

Aside from aflatoxin, the smaller peanuts proposed to be removed tend to be immature and do not have as good a flavor as the larger, more mature peanuts. Hence, the screen size changes should help the peanut industry make better tasting peanuts available to edible market channels.

This processor also indicated that the price of the small-sized 14/64 runner peanuts recently rose principally because of the proposed screen size changes. Departmental peanut market news reports indicate that the prices of the peanuts have risen about 10 cents per pound since 1987. However, prior to this adjustment, the prices for these peanuts were at unusually low levels when compared with previous seasons. Therefore, the price change was not unexpected and in any event cannot be solely attributed to the proposal.

This processor and others also indicated that firms which have used the smaller peanuts scheduled to be eliminated for use would no longer be able to provide consumers with good nutritious peanut butter at a cost substantially below the major brands. Peanut prices may increase because of this action, but, as indicated earlier, any price increase for the better quality peanuts is not expected to be substantial.

This processor also indicated that the screen changes would cause them financial problems because they have made long term commitments into 1988–89 to supply peanut butter and products using the peanuts to be eliminated from edible channels by this action. Because this action addresses quality concerns with regard to aflatoxin, the Department concludes that consumer food quality concerns should take precedence over commitments to deliver lower quality peanuts. It is likely that better quality peanuts can be substituted for the lower quality peanuts in these agreements with corresponding price adjustments.

Another manufacturer of peanut products stated that his firm always tries to ensure that only wholesome peanuts enter the edible market channels. This manufacturer stated that the increase in screen sizes as proposed would lessen the likelihood that unwholesome nuts would be consumed as edible material. He has indicated that the proposal to limit the percentage of allowable loose shelled kernels in farmers' stock peanuts would improve the quality and storability, and help ensure that only the better quality peanuts reach the consumer.

This manufacturer stressed the importance of peanut industry unanimity in support of efforts to improve the quality of peanuts and to ensure that only the very best quality peanuts be allowed to reach the consumer.

An association composed of all but one of the commercial peanut shellers, with facilities in Georgia, Florida, and Alabama, stated that its members supported all of the proposed changes relating to quality changes. This association indicated that quality should be a concern for all enterprises in the United States, but particularly with reference to those dealing in food consumed by the public. Its members feel that the proposed actions are a very positive step forward in improving the quality of the peanuts consumed by the public and urged that the proposed rule changes be adopted.

A national association which represents 90 companies who manufacture chocolate and confectionery products also submitted a comment. According to the association, the confectionery industry is the third largest user of peanuts in the United States, and accounts for about 20 percent of domestic edible usage or 330 million pounds annually. The association supported the committee's efforts to improve quality. Another association representing roasters and packers of peanuts, peanut butter, peanut butter cracker sandwiches, and other peanut products questioned the Department's conclusions on the price impact of the proposed screen size changes.

At this time, it appears that the size of the 1988 peanut crop is dependent upon the growing conditions between now and the harvest. If growing conditions are favorable in the major production areas, yields should be more normal and supplies adequate. If growing conditions deteriorate, as has been true during the last two years, yields will again be down and supplies tight. In any case, whether yields in 1988 are up or down, the supply of peanuts removed from edible channels by the proposed screen size changes will have less of an impact on supplies and prices than the low yields have had in the past two years (as stated earlier, yields in 1986 and 1987 were off about 15 percent from those in 1984 and 1985).

The Department's conclusion that the proposed screen size changes would not materially affect the price of better quality peanuts was premised on the fact that the quantity scheduled to be removed only represented about five percent of the edible peanuts and that the market effect of that would be less than the impact caused by the 15 percent reduction in yields the last two years. Moreover, reported planting intentions for 1988 were somewhat higher than those a year earlier and a return to more normal yields and larger crops would provide enough peanuts for edible market channels.

It is difficult to predict precisely the price increases that may occur. However, the Department concludes that the quality assurance goals expected to be achieved by the proposed screen size changes justify possible price increases. The Department believes that the recommended screen size changes address the potential aflatoxin problem in a sound and reasonable manner.

A major user of peanuts agreed with the committee that the removal of small, immature kernels will lessen the risks of aflatoxin contamination and off-flavor in peanuts and peanut products. This commenter supported the industry's efforts, stating that the proposed regulations were necessary to engender continued consumer confidence in the wholesomeness of peanuts and peanut products in general. The commenter felt that these changes will result in long-term benefits to peanut growers, shellers, users, and most importantly, to the consumers who buy the product. He also stated that the proposed change in inspection procedures (i.e., the screen size changes) will not materially affect the market for higher quality edible peanuts.

A national association of manufacturers of food products derived from or containing peanuts also supported the proposed screen changes characterizing them as a significant step to address legitimate concerns regarding the presence of aflatoxin in peanuts. This association reported that its members utilize about two-thirds of the annual domestic production of edible peanuts. The association also favored a lower tolerance for loose shelled kernels.

With regard to the change in inspection procedures to remove small, immature kernels, this association stated that this proposed action will, in its opinion, remove a major source of mold in both raw peanuts and peanut products. It also agreed with the Department's view that the removal of these peanuts (which represent about five percent of all edible quality peanuts) from edible market channels will not materially affect the market for better quality peanuts, but will increase

consumers' confidence in peanuts as a wholesome food.

Another comment from a firm which manufacturers, sells, and distibutes a major brand of peanut butter and nut products commended the committee for recommending the quality regulation changes regarding the loose shelled kernel content in farmers' stock peanuts and the moisture content limit in such peanuts. This firm also supported the recommended outgoing quality regulation change as a means of reducing the incidence of aflatoxin introduced into the food chain as well as off-flavors. It believes that the efforts of the committee will continue to assure the consumer of U.S. produced peanuts of a high quality product.

After analyzing all of the comments for and against the proposed loose shelled kernel content tolerance, the moisture tolerance, and the screen size changes, the Department has determined that the changes should be adopted as proposed to further the industry's objective of providing good quality peanuts to the public and of maintaining its good quality image.

One change is made in the Terms and Conditions for Indemnification for 1988 crop peanuts. This change will streamline the clearance procedures in making indemnification payments to handlers incurring losses due to aflatoxin. This will be done by paying handlers "quota" indemnification prices on eligible poundage up to 60 percent of the handler's net quota farmers' stock acquisitions. Sixty percent is the conversion factor for converting farmers' stock to shelled peanuts. This limitation will insure that no handler receives indemnification payments at quota price levels for more peanuts than were actually acquired as quota peanuts. Approved claims on poundage in excess of that amount will be paid at "additional" indemnification prices, which are lower than quota prices. This distinction reflects market price differences between "quota" and "additional" peanuts.

The current clearance process requires a great deal of staff time. The change is intended to reduce the amount of time the committee's staff now spends on handling certain indemnification claims and to make the system more efficient. This change will not be detrimental to handlers or the program, and no comments were received in opposition to this change.

It is the Department's view that these changes will help the peanut industry in providing only good quality, wholesome peanuts for edible channels, which is vital to maintaining and expanding markets for peanuts and products such as peanut butter, cookies, and candies. The change in the moisture determination requirements will relieve an undue burden on peanut producers and, as such, will not result in additional costs. The limitations on loose shelled kernels are expected to improve the quality of storage peanuts, thereby providing good quality peanuts for edible channels and reducing the committee's indemnification costs.

Based on the above, the Administrator of AMS has determined that the changes will not have a significant economic impact of a substantial number of small entities.

The final rule does not increase the reporting and recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) which have been previously approved by the Office of Management and Budget (Approval No. 0581-0067).

After consideration of all relevant information presented, including the committee's recommendations, the comments received in favor and opposition, and other information, it is found that the regulations, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The harvest and shipment of 1988 crop peanuts is expected to begin the third week of July; and (2) growers and handlers should be given as much advance notice as possible of these regulations and procedures applicable to 1988 crop peanuts so they can plan accordingly.

List of Subjects in 7 CFR Part 998

Marketing agreement, peanuts.

For the reasons set forth in the preamble, 7 CFR Part 998 is amended as follows:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR Part 998 [53 FR 20291, June 3, 1988] continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. In § 998.100, paragraph (b)(1), and paragraph (d), are revised for 1988 crop peanuts to read as follows:

§ 998.100 Incoming quality regulation—1988 crop.

* * * * *

(b) *Moisture and foreign material.*

(1) *Moisture.* Except as provided under paragraph (e), *Seed Peanuts*, no handler shall receive or acquire peanuts containing more than 10.49 percent moisture: *Provided*, That peanuts of a higher moisture content may be received and dried to not more than 10.49 percent moisture prior to storing or milling. On farmer's stock, such moisture determinations shall be rounded to the nearest whole number; or shelled peanuts, the determinations shall be carried to the hundredths place and shall not be rounded to the nearest whole number.

* * * * *

(d) *Loose shelled kernels.*

No handler shall receive or acquire farmers' stock peanuts containing more than 14.49 percent lose shelled kernels, except that peanuts having a higher loose shelled kernel content may be received or acquired if they are held separately until milled or shipped directly to a plant for prompt shelling. All percentage determinations shall be rounded to the nearest whole number. Handlers may separate from the loose shelled kernels received with farmers' stock peanuts those sizes of kernels which ride screens with the following or larger slot openings: Runner—$^{16}/_{64}$ x $^{3}/_{4}$ inch; Spanish and Valencia—$^{15}/_{64}$ x $^{3}/_{4}$ inch; Virginia—$^{15}/_{64}$ x 1 inch. If so separated, those loose shelled kernels which ride the screens may be included with shelled peanuts prepared by the handler for inspection and sale for human consumption: *Provided*, That no more than 5 percent of such loose shelled kernels are kernels which would fall through screens with such minimum prescribed openings. Those loose shelled kernels which do not ride the screens shall be removed from the farmers' stock peanuts and shall be held separate and apart from other peanuts and disposed of for inedible use as provided in paragraph (g) of the outgoing quality regulation. If the kernels which ride the prescribed screens are not separated from the kernels which do not ride the prescribed screens, the entire amount of loose shelled kernels shall be removed from farmers' stock peanuts and shall be so held and so delivered or disposed of. For the purpose of this regulation, the term "loose shelled kernels" means peanut kernels or portions of kernels completely free of their hulls and found in deliveries of farmers' stock peanuts.

* * * * *

3. In § 998.200, paragraph (a) *Shelled peanuts*, is revised for 1988 crop peanuts to read as follows:

§ 998.200 Outgoing quality regulation—1988 crop peanuts.

The following modify or are in addition to the peanut marketing agreement restrictions of § 998.32 on handler disposition of peanuts:

(a) *Shelled peanuts.* No handler shall ship or otherwise dispose of shelled peanuts for human consumption unless appropriate samples for pretesting have been drawn in accordance with paragraph (c) of this regulation, or which if of a category not eligible for indemnification are not certified "negative" as to aflatoxin, or which contain more than—

(1) A total of 1.50 percent unshelled peanuts and damaged kernels;

(2) A total of 2.50 percent unshelled peanuts and damaged kernels and minor defects except for "No. Two Virginia," which may not exceed 3.00 percent;

(3) 9.00 percent moisture; or

(4) 0.10 percent foreign material in peanuts "with splits" and peanuts of U.S. grade, other than U.S. splits, or 0.20 percent foreign material in U.S. splits and other edible quality peanuts not of U.S. grade. The lot size of such peanuts in bulk or bags shall not exceed 200,000 pounds. Fall through in such peanuts shall not exceed 4 percent except that fall through consisting of either split and broken kernels or whole kernels shall not exceed 3 percent and fall through of whole kernels in Runners or Virginias "with splits" shall not exceed 3 percent or 2 percent on Spanish "with splits." The term "fall through," as used herein, shall mean sound split and broken kernels and whole kernels which pass through specified screens. Screens used for determining fall through in peanuts covered by this paragraph (a) shall be as follows:

Type	Screen openings	
	Split and broken kernels	Whole kernels
Runners	17/64-inch round	15/64 x 3/4-inch slot.
Spanish & Valencia	16/64-inch round	15/64 x 3/4-inch slot.
Virginia	17/64-inch round	15/64 x 1-inch slot.

* * * * *

4. Paragraph (v) of § 998.300 *Terms and conditions of indemnification* is amended for 1988 crop peanuts to read as follows:

§ 998.300 Terms and conditions of indemnification—1988 crop peanuts.

* * * * *

(v) For the purpose of determining indemnification values, the term "quota peanuts" means peanuts marketed, or considered marketed, for domestic edible use, as defined by USDA–ASCS; and the term "additional peanuts" means any peanuts other than "quota peanuts" which are milled under the supervision of the Area Association, and verified. Handlers electing non-physical supervision shall receive "quota" indemnification prices on peanuts indemnified, and they shall not be required to furnish Area Association verification. However, under no circumstance shall a handler be paid "quota" indemnification prices on poundage greater than 60 percent of the net "quota" Segregation 1 farmers' stock peanuts acquired by the handler.

* * * * *

Dated: July 12, 1988.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 88–15930 Filed 7–14–88; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1030

[Docket No. AO–361–A25; DA–88–101]

Milk in the Chicago Regional Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the order regulating the handling of milk in the Chicago Regional marketing area based on industry proposals considered at a public hearing held at Madison, Wisconsin, on June 2–4, 1987. The amended order establishes minimal supply plant shipping requirements of three percent for the months of August and January, and five percent for each month of September through December. Such provisions replace those of the Chicago order which authorize the market administrator to require reserve supply plants to ship milk to bottling plants, when called upon to do so. If the new requirements are met, the supply plants generally will be pool plants during February through July without making any shipments. Handlers are permitted to form a unit of their own plants, or to form a unit, or units, with other handlers, in order to meet the performance requirements by shipping the required amounts of milk from only certain plants rather than from each plant in the unit. However, a unit will have to ship twice the percentage of milk required to be shipped from individual plants. Both the market administrator and the Director of the Dairy Division have limited authority to temporarily change the shipping requirements, if necessary. Other changes reduce the touch-base requirements, eliminate percentage limits on diversions, and eliminate storage requirements for supply plants.

Cooperative association representing more than the required two-thirds of the producers supplying milk for the market have approved the issuance of the amended order.

EFFECTIVE DATE: This regulation is effective August 15, 1988, except for § 1030.13(d)(1), which will be effective September 1, 1988.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–4829.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued May 15, 1987; published May 19, 1987 (52 FR 18894).

Extension of Time for Filing Briefs: Issued July 31, 1987; published August 6, 1987 (52 FR 29196).

Emergency Partial Decision: Issued October 8, 1987; published October 15, 1987 (52 FR 38235).

Order Amending Order: Issued October 20, 1987; published October 23, 1987 (52 FR 39611).

Recommended Decision: Issued March 8, 1988; published March 14, 1988 (53 FR 8205).

Extension of Time for Filing Exceptions: Issued March 29, 1988; published April 4, 1988 (53 FR 10894).

Final Decision: Issued June 23, 1988; published June 28, 1988 (53 FR 24298).

The amended order provides in § 1030.7(b)(6)(iii) that a handler or handlers establishing a unit must submit a written request to the market administrator on or before July 15, requesting that such plants qualify as a unit for the period of August through July of the following year. For the initial application of this rule, the deadline for submitting such request shall be August 15, 1988.

Similarly, each supply plant that is a pool plant in each month of September 1988 through January 1989 shall be considered to have met the shipping requirements for the month of August 1988 for the purpose of meeting the requirements set forth in §§ 1030.7(b)(1), 1030.7(b)(6)(iii), and 1030.7(b)(6)(v). The provision in § 1030.13(d)(1) concerning a dairy farmer's eligibility for diversion will become effective September 1, 1988.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Chicago Regional order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Chicago Regional marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1030

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Chicago Regional marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

1. The authority citation for 7 CFR Part 1030 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 1030.4 is revised to read as follows:

§ 1030.4 Plant.

"Plant" means a building together with its facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment that has facilities adequate for cleaning tank trucks, is approved by an appropriate health authority, at which milk is received from dairy farmers or other plants, and at which milk is processed and/or shipped to another plant.

3. Section 1030.6 is revised to read as follows:

§ 1030.6 Supply plant.

"Supply plant" means a plant at which Grade A milk is physically unloaded into the plant or a tank truck in the plant and is either processed and/or shipped during the month to another milk processing plant, except that any plant located on the premises of a pool distributing plant pursuant to § 1030.7(a) shall not be considered a supply plant unless it is located in a building that is entirely separate from the distributing plant.

4. Section 1030.7 is revised to read as follows:

§ 1030.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant or unit described in paragraph (a)(4) of this section from which during the month the disposition of fluid milk products specified in paragraph (a)(2) of this section is not less than 10 percent of the receipts specified in paragraph (a)(1) of this section and from which the disposition of fluid milk products specified in paragraph (a)(3) of this section as a percent of the receipts specified in paragraph (a)(1) of this section is not less than 45 percent in each of the months of September, October, November, and December, 35 percent in each of the months of January, February, March, and August, and 30 percent in all other months.

(1) The total Grade A fluid milk products, except filled milk, received during the month at such plant, including producer milk diverted to nonpool plants and to pool supply plants pursuant to § 1030.13, but excluding producer milk diverted to other pool distributing plants, receipts of fluid milk products in exempt milk, packaged fluid milk products and bulk fluid milk products by agreement for Class II and Class III uses from other pool distributing plants, and receipts from other order plants and unregulated supply plants which are assigned pursuant to §1030.44(a)(8) (i)(*a*) and (ii) and the corresponding step of § 1030.44(b).

(2) Packaged fluid milk products, except filled milk, disposed of as either route disposition in the marketing area or moved to other plants from which it is disposed of as route disposition in the marketing area. Such disposition is to be exclusive of receipts of packaged fluid milk products from other pool distributing plants.

(3) Packaged fluid milk products, except filled milk, disposed of as either route disposition or moved to other plants. Such disposition is to be

exclusive of receipts of packaged fluid milk products from other pool distributing plants.

(4) A unit consisting of at least one distributing plant and one or more additional plants of a handler at which milk is processed and packaged or manufactured shall be considered as one plant for the purpose of meeting the requirements of this paragraph if all such plants are located within the State of Wisconsin or that portion of the marketing area within the State of Illinois, and if, prior to the first day of the month, the handler operating such plants has filed a written request for such plants to be considered a unit with the market administrator.

(b) A supply plant or unit of supply plants described in paragraph (b)(6) of this section from which the quantity of fluid milk products (except filled milk) and condensed skim milk shipped and received and physically unloaded into plants described in paragraph (b)(2) of this section as a percent of the Grade A milk received at the plant(s) from dairy farmers (except dairy farmers described in § 1030.12(b)) and handlers described in § 1030.9(c), including producer milk diverted pursuant to § 1030.13, but excluding packaged fluid milk products that are disposed of from such plant(s) as route disposition, is not less than 3 percent for the months of Janury through August, and 5 percent for the months of September through December for individual plants and 6 percent and 10 percent, respectively, for any unit of plants, subject to the following conditions:

(1) A plant that was a pool plant pursuant to this paragraph during each of the months of August through January shall be a pool plant for each of the following months of February through July.

(2) Qualifying shipments pursuant to this paragraph may be made to the following plants, except as provided in paragraph (b)(2)(v) of this section:

(i) Pool plants described in paragraph (a) of this section;

(ii) Plants of producer-handlers;

(iii) Partially regulated distributing plants, except that credit for such shipments shall be limited to the amount of such milk which receives a Class I classification at the transferee plant;

(iv) Distributing plants fully regulated under other Federal orders, except that credit for shipments to such plants, shall be limited to the quantity shipped to pool distributing plants during the month and credits for shipments to other order plants shall not include any such shipments made on the basis of agreed-upon Class II or Class III utilization; and

(v) Whenever the authority provided in paragraph (b)(5) of this section is applied to increase the shipping requirements specified in this section, only shipments described in paragraph (b)(2)(i) of this section shall count as qualifying shipments for the purpose of meeting the increased requirements.

(3) The operator of a supply plant may include as qualifying shipments deliveries to pool distributing plants directly from farms of producers pursuant to § 1030.13(d).

(4) The quantity of condensed skim milk and fluid milk products moved (including milk divereted) from supply plants to each pool plant described in paragraph (a) or (c) of this section that shall count towards meeting the shipping requirements of this paragraph shall be a net quantity assignable at each such pool plant pro rata to supply plants in accordance with total receipts from such plants. The net quantity shall be computed by subtracting from the quantity of fluid milk products and condensed skim milk received from supply plants the following:

(i) The quantity of condensed skim milk not disposed of in a fluid milk product and the quantity of fluid milk products in the form of bulk milk and skim milk moved from the pool distributing plant to pool supply plants plus any such bulk shipments to nonpool plants as Class II or Class III milk other than:

(A) Transfers or diversions classified pursuant to § 1030.40(b)(3); and

(B) Transfers or diversions on New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving, Christmas, and on any Saturday if no milk is received at the pool distributing plant from a supply plant, in an amount not in excess of 120 percent of the average daily receipts of producer milk pursuant to § 1030.13(a) at the plant during the prior month, less the quality of producer milk diverted pursuant to § 1030.13(d) on such day. If no producer milk was received in the distributing plant during the prior month, the average daily receipts during the current month shall be used for this purpose; and

(ii) If milk is diverted from the pool distributing plant on the date of the receipts from the supply plant, the quantity so diverted, except any diversion of milk (not to exceed 3 days' production of any individual producer) made because of any emergency situation such as a breakdown of trucking equipment or hazardous road conditions if such emergency is reported to the market administrator.

(5) The shipping requirements of this paragraph may be increased or decreased if found necessary to obtain needed shipments or to prevent uneconomic shipments as follows, subject in either case to the conditions specified to paragraph (b)(5)(iii) of this section.

(i) The market administrator may, for a period of up to three months, increase or decrease the shipping requirements of this paragraph by up to two percentage points;

(ii) The Director of the Dairy Division may increase the shipping requirements of this paragraph by up to five percentage points or decrease them by up to ten percentage points;

(iii) Before making a finding that a change is necessary for the purposes set forth in this section, the market administrator or the Director of the Dairy Division shall investigate the need for revision, either on such person's own initiative or at the request of interested persons. If such investigation shows that a revision might be appropriate, a notice shall be issued stating that revision is being considered and inviting data, views, and arguments. If a plant that would not otherwise qualify as a pool plant during the month does qualify as a pool plant because of a reduction in shipping requirements pursuant to this paragraph, such plant shall be a nonpool plant for such month if the operator of the plant files a written request for nonpool status with the market administrator on or before the first day of the following month. If an increase is required in any month of February through July, the increase shall also apply to any supply plant that has pool status for the month pursuant to paragraph (b)(1) of this section.

(6) Two or more plants shall be considered a unit for the purpose of meeting the requirements of this paragraph if the following conditions are met:

(i) The plants are located within the State of Wisconsin or within that portion of the State of Illinois within the marketing area;

(ii) The plants included in the unit are owned or fully leased and operated by the handler establishing the unit and such plants were pool plants during the month prior to being included in a unit. Two or more handlers may establish a unit of designated plants by certifying to the market administrator a marketing agreement specifying the plants to be considered as a unit, and specifying which handler will be responsible for qualification of the unit. With regard to any leased plants included in a unit, the handler that leases a plant(s) and is a party to a marketing agreement with respect to plants included in a unit, shall

satisfy the market administrator that such handler:

(A) Is responsible pursuant to § 1030.73 for payments to producers whose milk is delivered to the leased plant or diverted therefrom by the handler;

(B) Controls and operates the leased plant; and

(C) Maintains in its books and records the accounts of the leased plant(s), including, but not limited to, records reflecting the receipt, sale, collection of proceeds, the gross value of the payrolls for all producer milk pooled by the handler operating the leased plant, and employee payroll or independent contractor records reflecting the handler's financial responsibility for operation of the plant.

(iii) The handler or handlers establishing the unit submits a written request to the market administrator on or before July 15 requesting that such plants qualify as a unit for the period of August through July of the following year. In the months of February through July, a unit shall not include any plant that was not a pool plant each month of the preceding period of August through January. Each plant that qualifies as a pool plant within a unit shall continue each month as a plant in the unit through the following July unless the plant subsequently fails to qualify for pooling or the handler or handlers establishing the unit submits a written request to the market administrator that the plant be deleted from the unit or that the unit be discontinued. Any plant that has been so deleted from a unit, or that has failed to qualify in any month, will not be part of the unit for the remaining months through July. The handler or handlers that establish a unit may add a plant operated by such handler or handlers to a unit, if such plant has been a pool plant each prior month of the current unit-operating period (August through July) and would otherwise be eligible to be in a unit, upon submission of a written request to the market administrator. Such plant will remain in the unit through the following July. Written requests to the market administrator to either delete a plant from the unit or to add a plant to the unit shall be submitted to the market administrator on or before the 15th day of the month preceding the month that such change will be effective. In the event of an ownership change or business failure of a handler that is a participant in a unit, the unit may be reorganized to reflect such changes by submitting a written request to file a new marketing agreement with the market administrator;

(iv) If a unit fails to qualify under the requirements of this paragraph, the handler responsible for qualifying the unit shall notify the market administrator which plant or plants will be deleted from the unit so that the remaining plants may be pooled as a unit. If the handler fails to do so, the market administrator shall exclude one or more plants, beginning at the bottom of the list of plants in the unit and continuing up the list as necessary until the deliveries are sufficient to qualify the remaining plants in the unit; and

(v) Each plant in a unit shall ship to a plant or plants pursuant to paragraph (a) or (c) of this section not less than 3 percent of the plant's receipts of milk from producers or 47,000 pounds, whichever is less, of condensed skim milk or fluid milk products in each of five months during the period of August through January, subject to the provisions of paragraph (b)(4) of this section. If the unit shipping requirements are reduced to zero pursuant to paragraph (b)(5)(ii) of this section, shipments by each plant in a unit shall not be required.

(c) Any plant that qualifies as a pool plant in each of the immediately preceding three months pursuant to paragraph (a) of this section or the shipping percentages in paragraph (b) of this section that is unable to meet such performance standards for the current month because of unavoidable circumstances determined by the market administrator to be beyond the control of the handler operating the plant, such as a natural disaster (ice storm, wind storm, flood), fire, breakdown of equipment, or work stoppage, shall be considered to have met the minimum performance standards during the period of such unavoidable circumstances, but such relief shall not be granted for more than two consecutive months.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant or exempt distributing plant;

(2) A plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless it is qualified as a pool plant pursuant to paragraph (a), (b) or (c) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants qualified on the basis of route disposition in this marketing area than is so disposed of in the marketing area regulated pursuant to such other order; and

(3) That portion of a plant that is physically separated from the Grade A portion of such plant, and is not approved by any regulatory agency for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

5. Section 1030.13 is amended by removing in paragraph (a) the words", in the the case of a reload facility,", by removing paragraphs (d)(3) and (d)(6), redesignating (d)(4), (d)(5), and (d)(7) as (d)(3), (d)(4), and (d)(5), and revising paragraphs (d)(1) and (d)(2) to read as follows:

§ 1030.13 Producer milk.

* * * * *

(d) * * *

(1) During each of the months of August through January, milk from a dairy farmer shall not be eligible for diversion unless at least one day's production is received and physically unloaded at the pool plant where such milk is reported as producer milk;

(2) Milk from a dairy farmer who was not a producer during the previous month shall not be eligible for diversion unless at least one day's production is received and physically unloaded during the month at the pool plant where such milk is reported as producer milk;

* * * * *

6. Section 1030.30 is amended by removing in the introductory text of paragraph (a) the words "and/or reserve supply plants", and revising paragraph (a)(3) to read as follows:

§ 1030.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(3) Receipts of fluid milk products and bulk fluid cream products from pool plants of other handlers (or other pool plants, as applicable), including a separate statement of the net receipts from each supply plant, computed pursuant to § 1030.7(b)(4);

* * * * *

Signed at Washington, DC, on: July 12, 1988.

Kenneth A. Gilles,

Assistant Secretary of Agriculture, Marketing and Inspection Services.

[FR Doc. 88-15979 Filed 7-14-88; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1427

Cotton Loan Program Regulations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to amend the Commodity Credit Corporation (CCC) Cotton Loan Program Regulations governing the 1980 and subsequent crops of cotton concerning the packaging of cotton which is pledged to CCC as collateral for price support loans. The specifications for bale packaging materials used in wrapping cotton for 1988 that were approved and published by the Joint Cotton Industry Bale Packaging Committee (JCIBPC) are acceptable to CCC. Therefore, CCC is incorporating these specifications by reference and will require that 1988-crop cotton pledged to CCC as collateral for price support loan be wrapped to comply with these specifications.

EFFECTIVE DATE: July 14, 1988. The Director of the Federal Register approved the incorporation by reference of the specifications effective on July 14, 1988.

ADDRESS: Director, Cotton, Grain, and Rice Price Support Division, USDA–ASCS, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Beverly Pritts, Cotton, Grain, and Rice Price Support Division, USDA–ASCS, P.O. Box 2415, Washington, DC 20013, (202) 447–8374.

The Final Impact Statement describing the options considered in developing the rule that eliminated the publishing in the **Federal Register** of packaging specifications and the impact of implementing each option is available upon request from the above-named individual.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major". It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effect on competition, employment, investment, productivity innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program that this rule applies to are: Commodity Loans and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

An Environmental Evaluation has been completed. It has been determined that this action is not expected to have any significant impact on the quality of the human environment. In addition, it has been determined this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

A final rule was published in the **Federal Register** on July 1, 1982, that amended the cotton loan program regulations to provide that CCC would no longer publish in the **Federal Register** the packaging specifications acceptable to CCC for packaging cotton pledged to CCC for price support loans. Instead, CCC determined that the specifications for cotton bale packaging materials approved and published by the Joint Cotton Industry Bale Packaging Committee (JCIBPC) were acceptable to CCC for packaging cotton pledged to CCC for price support loans and incorporated by reference, in accordance with 1 CFR Part 51, the specifications approved and published by the JCIBPC for 1982-crop cotton. Since the only purpose of this final rule is to amend the cotton loan program regulations to incorporate, by reference, the specifications approved and published by the JCIBPC for 1988-crop cotton which are generally available and accepted by the cotton industry, it has been determined that no further public rulemaking is required.

Accordingly, the regulations governing the cotton loan program set forth at 7 CFR Part 1427 are amended as stated herein in order to incorporate, by reference, in accordance with 1 CFR Part 51, the packaging specifications approved and published by the JCIBPC for 1988-crop cotton.

Copies of the specifications published by the JCIBPC will be made available to the public upon request by that Committee and by county ASCS offices.

List of Subjects in 7 CFR Part 1427

Cotton, Loan programs—agriculture, Packaging and containers, Price support programs, Surety bonds, Warehouse.

PART 1427—[AMENDED]

Accordingly, 7 CFR Part 1427 is amended as follows:

1. The authority citation for 7 CFR Part 1427 continues to read as follows:

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070 as amended, 1072 (15 U.S.C. 714b and 714c); secs. 103A, 401 and 403 of the Agricultural Act of 1949, as amended, 99 Stat. 1407, as amended, 63 Stat. 1054, as amended (7 U.S.C. 1444–1, 1421 and 1423); sec. 501 of Pub. L. 99–198.

2. In § 1427.5, paragraph (l) is revised to read as follows:

§ 1427.5 Eligible cotton.

* * * * *

(l) Each bale must be packaged in materials which meet specifications adopted and published by the Joint Cotton Industry Bale Packaging Committee (JCIBPC), sponsored by the National Cotton Council of America, for bale coverings and bale ties which are identified and approved by the JCIBPC as experimental packaging material. Heads of bales must be completely covered. Copies of the 1988 Specifications for Cotton Bale Packaging Materials published by the JCIBPC which are incorporated by reference are available upon request at the county ASCS office and at the following address: Joint Cotton Industry Bale Packaging Committee, National Cotton Council of America, P.O. Box 12285, Memphis, Tennessee 38112. Information with respect to experimental packaging material may be obtained from JCIBPC. This incorporation by reference was approved by the Director of the Federal Register on July 14, 1988.

Signed at Washington, DC, on July 12, 1988.

Milton Hertz,

Executive Vice-President, Commodity Credit Corporation.

[FR Doc. 88–16002 Filed 7–14–88; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–85–AD; Amdt. 39–5979]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which requires

inspection of main landing gear drag brace actuators, and repair or replacement, as necessary. This amendment is prompted by reports that two operators were unable to retract the right main landing gear due to an inoperative drag brace actuator. This condition, if not corrected, could also result in the main landing gear not fully extending when alternate landing gear extension procedure is required.

EFFECTIVE DATE: August 3, 1988.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. McCracken, Systems and Equipment Branch, ANM–130S; telephone (206) 431–1947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Two operators of Boeing Model 767 airplanes have reported the inability to retract the right main landing gear due to an inoperative drag actuator. Investigation revealed that the piston in each actuator was very tight in the cylinder due to a swollen piston seal. The swollen piston seal had caused the piston retaining nut to back off of the threaded end of the piston due to torsional forces induced by the swollen seal during normal landing gear cycling. The piston seal was found to be manufactured with an incorrect material. In addition, two drag brace actuators have been discovered with excessive piston friction forces attributed to obsolete configuration of rod seals. In the event that the alternate landing gear extension system operation is required, swollen piston seals or obsolete configuration rod seals may prevent full extension and locking of the main landing gear. The FAA has determined that, while this problem may not be exhibited on actuators when first installed, it would be exhibited within the first 200 hours time-in-service.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–32A0071, dated June 2, 1988, which describes inspection, and repair or replacement, as necessary, of the main landing gear drag brace actuators.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires inspection, and repair or replacement, as necessary, of main landing gear drag brace actuators, in accordance with the service bulletin previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1985, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, as listed in Boeing Alert Service Bulletin 767–32A0071, dated June 2, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To preclude failure of the main landing gear to fully extend and lock due to faulty actuator piston seals or obsolete configuration rod seals, accomplish the following:

A. Within the next 300 hours time-in-service after the effective date of this AD, inspect the main landing gear drag brace actuators in accordance with Boeing Alert Service Bulletin 767–32A0071, dated June 2, 1988.

B. If any actuator has accumulated less than 200 hours total time-in-service at the time of inspection, repeat the inspection required by paragraph A., above, at intervals not to exceed 100 hours time-in-service until the actuator has accumulated more than 200 hours time-in-service, at which time the inspections may be terminated.

C. If any actuator is found to have swollen seals or obsolete configuration seals, before further flight, replace or modify the actuator, in accordance with Boeing Service Bulletin 767–32A0071, dated June 2, 1988.

D. Accomplishing the piston seal replacement, and the rod seal inspection and replacement, if necessary, in accordance with Boeing Service Bulletin 767–32A0071, dated June 2, 1988, constitutes terminating action for the initial and repetitive inspections required by paragraphs A. and B., above.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspections required by this AD.

All persons affected by this directive who have not already received copies of the appropriate service bulletin cited herein may obtain copies upon requests to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective August 3, 1988.

Issued in Washington, DC, on July 8, 1988.

M.C. Beard,

Director, Office of Airworthiness.

[FR Doc. 88-15915 Filed 7-14-88; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 88-NM-11-AD; Amdt. 39-5981]

Airworthiness Directives: British Aerospace Model BAe 146 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to British Aerospace Model BAe 146 series airplanes, which requires inspection of the main landing gear main fitting for defects, and repair, if necessary. This amendment is prompted by results of the manufacturer's fatigue testing and static strength tests. This condition, if not corrected, could lead to collapse of the main landing gear.

EFFECTIVE DATE: August 22, 1988.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, applicable to Model BAe 146 series airplanes, to require inspection and repair, if necessary, of the main landing gear main fitting, was published in the Federal Register on March 30, 1988 (53 FR 10254).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

One commenter supported the issuance of the AD as proposed.

The other commenter questioned the need for the AD, since the proposed inspection requirements have already been made part of the BAe 146 aircraft Maintenance Manual (AMM) (as of January 1988). The FAA does not concur that the AD is unwarranted. While the FAA recognizes that changes may have been made to the manufacturer's maintenance program, that program in and of itself is not mandatory for U.S. operators. The FAA has determined that the inspections must be performed by U.S. operators of this series airplane, and the means to ensure that the inspections are accomplished is by issuance of an AD.

Paragraph A. of the final rule, including the *NOTE* portion, has been revised: (1) To identify the appropriate Dowty Rotol Service Bulletin where instructions for certain required procedures are located; (2) to delete reference to the revision number and date of the Dowty Rotol Service Bulletins; and (3) to clarify that the modification of the MLG fittings in accordance with Dowty Rotol Service Bulletin 146-32-56 (as recommended in Dowty Rotol Service Bulletin 146-32-23) is not made mandatory by this AD. The FAA has determined that these changes are for clarification purposes only; they will not increase the economic burden on any operator, nor will they increase the scope of the AD.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes described above.

It is estimated that 30 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $9,600.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($320). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

PART 39—[AMENDED]

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to all British Aerospace (BAe) Model 146 series airplanes as listed in BAe 146 Service Bulletin 32-73, dated March 13, 1987, certificated in all categories. Compliance required as indicated, unless previously accomplished.

To prevent collapse of the main landing gear (MLG) due to defective main fittings, accomplish the following:

A. Prior to the accumulation of 12,000 landings or within the next 1,000 landings after the effective date of this AD, whichever occurs later, inspect the main fitting and barrel section of the main fitting in accordance with British Aerospace BAe 146 Service Bulletin 32-73, dated March 13, 1987. If defective parts are identified during the inspection, repair, prior to further flight, in accordance with Dowty Rotol Service Bulletin number 146-32-23.

Note: British Aerospace BAe Service Bulletin 32-73 references Dowty Rotol Service Bulletin 146-32-23 for specific procedures for identification, inspection, and repair of the affected MLG parts. The modification of MLG fittings in accordance with Dowty Rotol Service Bulletin 146-32-56 (as recommended in Dowty Rotol Service Bulletin 146-32-23) is not made mandatory by this airworthiness directive.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to

operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletin, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective August 22, 1988.

Issued in Washington, DC, on July 8, 1988.

M.C. Beard,

Director, Office of Airworthiness.

[FR Doc. 88-15916 Filed 7-14-88; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 88-NM-70-AD; Amdt. 39-5980]

Airworthiness Directives; McDonnell Douglas Model DC-10-10, -10F, -15, -30, -30F, -40, and KC-10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-10 and KC-10 series airplanes, which requires inspection and modification or repair, if necessary, of the battery ground cable ground stud installation and the drain valve installations in the Center Accessory Compartment (CAC). This amendment is prompted by a report of a loose and/or corroded battery ground stud connection and possible contamination of insulation blankets, or flammable liquid, within the CAC lower fuselage area. This condition, if not corrected, could result in an in-flight or ground fire in the CAC.

EFFECTIVE DATE: August 3, 1988.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Richard S. Saul, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6323.

SUPPLEMENTARY INFORMATION: A McDonnell Douglas Model DC-10 airplane recently experienced a fire in the Center Accessory Compartment (CAC) during taxi after landing. A flight attendant informed the captain of smoke entering the cabin. The airplane continued to the gate and passengers were off-loaded in a normal manner. The fire department accessed the CAC through a hatch in the cabin and extinguished the fire.

Subsequent investigation revealed a loose and/or corroded battery ground stud connection as the ignition source for the fire. Possible contamination of insulation blankets in the CAC, or flammable liquid within the CAC lower fuselage area, may have provided the fuel source for the fire.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin A24-141, Revision 1, dated May 12, 1988, which describes procedures for inspection for arcing and/or corrosion on the CAC battery ground stud installation and for proper operation of the two CAC drain valves. The service bulletin also provides information for proper installation of ground stud parts and advises of an improved drain valve which may be used to replace faulty drain valves.

McDonnell Douglas released Service Bulletin 24-73, Revision 1, dated February 2, 1978, which contains procedures to modify the CAC battery ground stud installation by adding a clamp to the battery ground cable. This service bulletin was released as a result of a McDonnell Douglas investigation which revealed the potential for development of a loose ground stud connection due to wrenching of the ground cable during routine battery maintenance. Installation of this clamp will eliminate the unsafe condition described above.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires inspection and modification or repair, if necessary, in accordance with McDonnell Douglas Service Bulletin A24-141, Revision 1, dated May 12, 1988, and replacement of the main battery ground cable bracket in accordance with McDonnell Douglas Service Bulletin 24-73, Revision 1, dated February 2, 1978.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure herein are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

PART 39—[AMENDED]

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-10-10, -10F, -15, -30, -30F, -40, and KC-10A (Military) series airplanes, as listed in McDonnell Douglas Service Bulletin A24-141, Revision 1, dated May 12, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent a fire in the Center Accessory Compartment (CAC), accomplish the following:

A. For all airplanes: Within 30 days after the effective date of this AD, and thereafter at intervals not to exceed 60 days, inspect the battery ground stud installation for evidence of arcing and/or corrosion, and check the two CAC drain valve installations for proper operation, in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin A24-141, Revision 1, dated May 12, 1988.

1. If the ground stud installation is found to be burnt or corroded, prior to further flight, replace the ground stud installation parts in accordance with the service bulletin.

2. If the drain valve installation is not free of deterioration, is sticking, or is not functioning properly, prior to further flight, repair or replace the drain valve installation in accordance with the service bulletin.

B. For airplanes that have not incorporated McDonnell Douglas Service Bulletin 24-73, Revision 1, dated February 2, 1978, or the production equivalent: Within 90 days after the effective date of this AD, replace the main battery ground cable bracket in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin 24-73, Revision 1, dated February 2, 1978. This constitutes terminating action for the repetitive inspection requirements of paragraph A., above.

C. Alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60).

This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective August 3, 1988.

Issued in Washington, DC, on July 8, 1988.

M.C. Beard,

Director, Office of Airworthiness.

[FR Doc. 88-15917 Filed 7-14-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74, 81, and 82

[Docket Nos. 76N-0366 and 83C-0127]

Revocation of Regulations; D&C Red No. 8 and D&C Red No. 9

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is removing the color additive regulations that provide for the use of color additives D&C Red No. 8 and D&C Red No. 9 for use in ingested drugs and cosmetic lip products and in externally applied drugs and cosmetics. This action is based upon previous findings by FDA that these color additives are carcinogenic in test animals and on the decision of the U.S. Court of Appeals for the District of Columbia on D&C Orange No. 17 and D&C Red No. 19 that carcinogenic color additives cannot be listed as color additives on the basis of a *de minimis* exception to the color additive Delaney clause in the Federal Food, Drug, and Cosmetic Act (the act). Published elsewhere in this issue of the **Federal Register** is a notice denying the color additive petition that requested permanent listing of D&C Red Nos. 8 and 9 as color additives.

DATES: Effective July 15, 1988; objections by August 15, 1988.

ADDRESS: Documents may be seen in, and written objections to, the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION:

I. Regulatory History

In the **Federal Register** of December 5, 1986 (51 FR 43877), FDA published a final rule permanently listing D&C Red No. 8 and D&C Red No. 9 for use in ingested drug and cosmetic lip products and in externally applied drugs and cosmetics. In that final rule FDA concluded that, although available studies establish that D&C Red No. 9 and, by implication, D&C Red No. 8 are carcinogens when ingested by laboratory animals, quantitative risk assessments of the color additives indicate that the risk of human cancer from use of these color additives in ingested drug and cosmetic lip products, and in externally applied drugs and cosmetics, would be extremely low and that there would be no benefit to the public health from prohibiting these uses of the color additives. FDA concluded that the use of D&C Red No. 8 and D&C Red No. 9 were safe under the conditions prescribed in the regulations permanently listing the color additives.

FDA also concluded in the December 5, 1986, final rule that it was appropriate to apply *de minimis* exceptions to the Delaney clause of the Color Additive Amendments of 1960 (the amendments) to the act because any risk of cancer that the color additives may present is of no public health consequence.

II. Comments and Objections

In response to the December 5, 1986, final rule, the Public Citizen Litigation Group (Public Citizen) and others filed objections to the listing of D&C Red Nos. 8 and 9. These objections stayed the effective date of the final regulations. Additionally, the Cosmetic, Toiletry and Fragrance Association, Inc. (CTFA), submitted comments to FDA in support of the agency's actions. Neither group requested a hearing.

FDA, in the **Federal Register** of June 5, 1987 (52 FR 21302), responded to the objections. In that document, FDA modified several aspects of the manufacturing process for D&C Red No. 9, and established a new effective date for the permanent listing of D&C Red Nos. 8 and 9. This rule also established a new effective date for the revised new manufacturing process for D&C Red No. 9, incorporated FDA's explanation of its interpretations of the Delaney clause that had been published in the **Federal Register** of February 19, 1987, and reaffirmed the agency's conclusions as to the safety of the two color additives.

On July 31, 1987, FDA confirmed the effective date of the rule revising the manufacturing process for D&C Red No. 9.

III. Legal Action

On August 3, 1987, Public Citizen filed suit in the U.S. Court of Appeals for the Third Circuit of Philadelphia, seeking to overturn FDA's decision to permanently list D&C Red Nos. 8 and 9. However, before a decision was reached by that Court, the U.S. Court of Appeals in Washington, DC issued a decision relating to D&C Red No. 19 and D&C Orange No. 17 and holding that "the Delaney clause of Color Additive Amendments does not contain an implicit *de minimis* exception for carcinogens with trivial risk to humans,"

and that the listing of carcinogenic color additives is contrary to law.

Following this decision, CTFA, an intervenor in the D.C. Circuit case, petitioned the U.S. Supreme Court to grant a writ of certiorari on the decision. On April 28, 1988, the Supreme Court denied certiorari. The agency, on May 26, 1988, asked the Court of Appeals for the Third Circuit to remand the case on D&C Red Nos. 8 and 9 to the agency so that it could revoke the listings of these colors because of the D.C. Circuit's decision, involving the same issues, on D&C Red No. 19 and D&C Orange No. 17. D&C Res Nos. 8 and 9 had been permanently listed based upon legal reasoning identical to that used to permanently list D&C Red No. 19 and D&C Orange No. 17. Subsequently, the Court of Appeals for the Third Circuit granted the agency's request and remanded to FDA the decision in D&C Red Nos. 8 and 9.

IV. FDA Action

In reaching its decision regarding the action to be taken on D&C Red No. 8 and D&C Red No. 9, FDA has considered the D.C. Circuit's decision on D&C Red No. 19 and D&C Orange 17 that the Delaney clause bars the permanent listing of any color additive that has been shown to induce cancer. FDA has found that D&C Red No. 9, and, by implication, D&C Red No. 8, induce cancer in laboratory test animals. There have been no additional data submitted to FDA that would contravene the agency's previous findings. The carcinogenicity of D&C Red No. 9 and other data relevant to the safety of the two additives were discussed in the **Federal Register** in documents published on December 5, 1986 (51 FR 43877), June 5, 1987 (52 FR 21302), and July 31, 1987 (52 FR 28552).

V. Conclusions

FDA has previously concluded that D&C Red No. 9 induces cancer in test animals, that D&C Red No. 8 is toxicologically equivalent to D&C Red No. 9, and that therefore the results of toxicity and carcinogenicity studies of D&C Red No. 9 apply to both additives. No new data or information have been submitted to FDA on this issue. On the basis of the finding of carcinogenicity and the D.C. Circuit Court's decision on D&C Red No. 19 and D&C Orange No. 17 that there is no *de minimis* exception to the Delaney clause for color additives, FDA concludes that the regulations permanently listing D&C Red Nos. 8 and 9 are contrary to law and without legal effect. Moreover, in light of the Court's ruling, the carcinogenicity of the color additives, and the congressional concern as expressed in the Delaney clause about the safety of color additives found to be carcinogens, the agency concludes that not only is there no legal basis upon which to permit the permanent listing of the color additives, but also no basis to put them back on the provisional list (Pub. L. 86–618, section 203(a)). Thus, in the regulations set forth below, the agency is removing those color additive regulations which permanently listed D&C Red No. 8 and D&C Red No. 9, and removing the regulations that provide for the provisional use of the lakes of the color additives.

Consistent with the revocation regulations, all certificates heretofore issued for both D&C Red No. 8 and D&C Red No. 9, their lakes, and all mixtures containing these color additives for ingested drug and cosmetic lip products and for externally applied drug and cosmetic uses are cancelled as of July 15, 1988. After this date, the addition of D&C Red No. 8 or D&C Red No. 9 to drugs or cosmetics will cause such products to be adulterated within the meaning of sections 501 and 601 of the act (21 U.S.C. 351 and 361) and to be subject to regulatory action. This prohibition applies to the use of the straight color additives, their lakes, and mixtures of the color additives and their lakes. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice denying the color additive petition for these two color additives.

FDA also concludes that the health concern regarding the use of these color additives does not represent an acute, imminent hazard. Therefore, the protection of the public health does not require: (1) Recall from the market of drug and cosmetic products for external use that contain either color additive, or (2) the destruction of such drug or cosmetic products to which either color has already been added.

Manufacturers of new drugs and new animal drugs (including certifiable antibiotics for animal use) that contain D&C Red No. 8 or D&C Red No. 9 may either discontinue use of the color additives or substitute different color additives in accordance with the provisions of 21 CFR 314.70(b)(2)(i) and (d)(4) or 21 CFR 514.8(d)(3) and (e), as appropriate. If a substitute color additive is not used, the human drug manufacturer shall describe the change fully in the next annual report as required under § 314.81(b)(2)(iv)(*b*). If a substitute color additive is used, the manufacturer shall file with FDA a supplemental new drug application or a supplemental new animal drug application containing data describing the new composition and showing that the change is composition does not interfere with any assay or other control procedures used in manufacturing the drug, or that the assay and control procedures have been revised to make them adequate.

The applicant shall also submit data available to establish the stability of the revised formulation. If the data are too limited to support a conclusion that the drug will retain its declared potency for a reasonable marketing period, the applicant shall submit a commitment to test the stability of marketed batches at reasonable intervals, to submit to FDA those data as they become available, and to recall from the market any batch found to fall outside the approved specifications for the drug.

Each sponsor of a notice of claimed investigational exemption for a new drug (IND) or a notice of claimed investigational exemption for a new animal drug (INAD) containing D&C Red No.8 or D&C Red No. 9 should promptly amend the IND or INAD to indicate that the color additives have been deleted or a different color additive substituted.

FDA is aware that supplies of alternative color additives and labeling may be difficult to obtain immediately. Consequently, drug and cosmetic labeling that states that the product contains "artificial color" or that specifically identifies D&C Red No. 8 and D&C Red No. 9 may continue to be used with the uncolored product or product containing alternative color additives during the time necessary to obtain supplies of revised labeling or until July 17, 1989, whichever comes first.

VI. Economic and Environmental Impacts

Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354) do not apply to actions of this type.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. A copy of the FDA environmental assessment is on file with the Dockets Management Branch (address above).

List of Subjects

21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

21 CFR Part 81

Color additives, Cosmetics, Drugs.

21 CFR Part 82

Color additives, Color additives lakes, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 74, 81, and 82 are amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 74 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376; 21 CFR 5.10.

§ 74.1308 [Removed]

2. Section 74.1308 *D&C Red No. 8* is removed.

§ 741.1309 [Removed]

3. Section 74.1309 *D&C Red No. 9* is removed.

§ 74.2308 [Removed]

4. Section 74.2308 *D&C Red No. 8* is removed.

§ 74.2309 [Removed]

5. Section 74.2309 *D&C Red No. 9* is removed.

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

6. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note); 21 CFR 5.10.

7. Section 81.30 is amended by adding new paragraphs (s) (3) and (4) to read as follows:

§ 81.30 Cancellation of certificates.

* * * * *

(s) * * *

(3) Certificates issued for D&C Red No. 8, and D&C Red No. 9, their lakes, and all mixtures containing these color additives are cancelled and have no effect as pertains to their use in ingested drug and cosmetic lip products and in externally applied drugs and cosmetics after July 15, 1988, and use of these color additives in the manufacture of ingested drugs and cosmetic lip products and in externally applied drugs and cosmetics after this date will result in adulteration.

(4) The agency finds, on the basis of the scientific evidence before it, that no action has to be taken to remove from the market ingested drug and cosmetic lip products and externally applied drugs and cosmetics to which the color additives were added on or before July 15, 1988.

* * * * *

PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

8. The authority citation for 21 CFR Part 82 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

§ 82.1308 [Removed]

9. Section 82.1308 *D&C Red No. 8* is removed.

§ 82.1309 [Removed]

10. Section 82.1309 *D&C Red No. 9* is removed.

Dated: July 12, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–16045 Filed 7–14–88; 8:45 am]

BILLING CODE 4160–01–M

---

21 CFR Parts 74, 81, and 82

[Docket Nos. 76N–0366, 83C–0102, and 83C–0129]

Revocation of Regulations; D&C Red No. 19 and D&C Orange No. 17

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is removing the color additive regulations that provide for the use of the color additives D&C Red No. 19 and D&C Orange No. 17 for use in externally applied drugs and cosmetics. The FDA action is based upon the fact that the color additives induce cancer and the finding of the U.S. Court of Appeals for the District of Columbia that the two color additives cannot be listed as color additives on the basis of a *de minimis* exception to section 706(b) of the Federal Food, Drug, and Cosmetic Act (the act). (The U.S. Supreme Court subsequently refused a writ of certiorari on the Appeals Court decision.) Published elsewhere in this issue of the **Federal Register** are notices denying the color additive petitions that requested approval of D&C Red No. 19 and D&C Orange No. 17 as color additives.

DATES: Effective July 15, 1988; objections by August 15, 1988.

ADDRESS: Documents may be seen in, and written objections to, the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5676.

SUPPLEMENTARY INFORMATION:

I. Regulatory History

In the **Federal Register** of August 7, 1986, FDA published final regulations permanently listing D&C Orange No. 17 and D&C Red No. 19 for use in externally applied drugs and cosmetics (51 FR 28331 and 51 FR 28346, respectively). In these two documents FDA concluded that, although available studies establish that the color additives induced cancer in animals, quantitative risk estimates of the colors indicate that the risk of human cancer from use of these color additives in externally applied drugs and cosmetics would be extremely low and that there would be no benefit to the public health from prohibiting these uses of the color additives. FDA concluded that the use of D&C Red No. 19 and D&C Orange No. 17 in externally applied drugs and cosmetics was safe under the conditions of use prescribed in the regulations permanently listing the colors.

FDA also concluded in the August 7, 1986, documents that it was appropriate to apply *de minimis* exceptions to the Delaney clause of the Color Additives Amendment to the Food, Drug, and Cosmetic Act because any theoretical risk of cancer that the color additives may present is of no public health consequence.

II. Comments and Objections

On August 21, 1986, in response to the final rules permanently listing D&C Orange No. 17 and D&C Red No. 19, the Public Citizen Litigation Group (Public Citizen) filed objections to the final rule. This filing automatically stayed the effective date of the color additive regulations. On September 8, 1986, the Cosmetic Toiletry and Fragrance Association, Inc. (CTFA), filed comments in support of both final rules. Neither the objections nor comments, however, requested a hearing.

FDA, in the **Federal Register** of October 6, 1986 (51 FR 35509), published a final rule which responded to the objections from Public Citizen; removed the stay of the regulations for the permanent listing of D&C Orange No. 17 and D&C Red No. 19; and established the effective date of October 6, 1986, for their use in externally applied drugs and cosmetics.

Following publication of this final rule, Public Citizen filed suit in the U.S. Court of Appeals for the District of Columbia to overturn the FDA decision to permanently list these two color additives (*Public Citizen* v. *Young*, No. 86–1548).

III. Judicial Review

In an opinion dated October 23, 1987, the court presented its finding regarding the Public Citizen challenge of the decision by FDA to permanently list the color additives D&C Red No. 19 and D&C Orange No. 17, stating:

> In sum, we hold that the Delaney Clause of the Color Additive Amendments does not contain an implicit *de minimis* exception for carcinogens with trivial risk to humans. We based this decision on our understanding that Congress adopted an "extraordinarily rigid" position, denying the FDA authority to list a dye once it is found to "induce cancer in animals" in the conventional sense of the term.

In its conclusion the Court stated:

> In sum we hold that the agency's *de minimis* interpretation of the Delaney Clause of the Color Additive Amendments is contrary to law. The listing decisions for D&C Orange No. 17 and D&C Red No. 19 based on that interpretation must therefore be corrected.

Following this decision, the Cosmetic, Toiletry and Fragrance Association, an intervenor in the Court of Appeals case, petitioned the United States Supreme Court to grant a writ of certiorari on the decision of the Appeals Court. The petition was opposed by both Public Citizen and the U.S. Government. On April 18, 1988, the Supreme Court refused, without comment, to grant the writ.

IV. FDA Action

In reaching its decision regarding the action to be taken on the D&C Red No. 19 and D&C Orange No. 17, FDA has considered the Appeals Court's decision that the Delaney clause presents a bar to the permanent listing of any color additive that has been shown to induce cancer and the Supreme Court's refusal to grant a writ of certiorari for appeal of the decision. FDA has found that the two color additives induce cancer in test animals, and there have been no additional data submitted to FDA that would contravene the agency's previous findings. The carcinogenicity of D&C Red No. 19 and other data relevant to its safety were discussed in the **Federal Register** in documents published on February 4, 1983 (48 FR 5262) and August 7, 1986 (51 FR 28346). The carcinogenicity of D&C Orange No. 17 and other data relevant to its safety were discussed in the **Federal Register** in documents published April 1, 1983 (48 FR 14045) and August 7, 1986 (51 FR 28331).

V. Conclusions

FDA has previously concluded that these colors additives induce cancer in test animals. On the basis of the finding of carcinogenicity and the Court decision that there is no *de minimis* exception to the Delaney clause for color additives, FDA hereby concludes that the regulations are contrary to law and without legal effect. Moreover, in light of the Court's ruling, the carcinogenicity of the color additives, and the Congressional concern as expressed in the Delaney clause about the safety of color additives found to be carcinogens, the agency concludes that not only is there no legal basis upon which to continue the permanent listing of the color additives, but also no basis to put them back on the provisional list (Pub. L. 86–618, section 203(a)). Thus, in the regulations set forth below, the agency is removing those color additive regulations which permanently listed D&C Orange No. 17 and D&C Red No. 19 and removing the regulation that provides for the provisional use of lakes of these color additives.

Furthermore, consistent with the revocation regulations, all certificates heretofore issued for both D&C Red No. 19 and D&C Orange No. 17, their lakes, and all mixtures containing these color additives for externally applied drug and cosmetic use are cancelled as of July 15, 1988. After this date, the addition of D&C Red No. 19 or D&C Orange No. 17 to drugs or cosmetics will cause such products to be adulterated within the meaning of sections 501 and 601 of the act (21 U.S.C. 351 and 361) and to be subject to regulatory action. This prohibition applies to the use of the straight color additives, their lakes, and mixtures of the color additives and their lakes. Elsewhere in this issue of the **Federal Register**, FDA is publishing notices denying the color additive petitions for these two color additives.

FDA also concludes that the health concern regarding the use of these color additives does not represent an acute, imminent hazard. Therefore, the protection of the public health does not require: (1) Recall from the market of drug and cosmetic products for external use that contain either color additive, or (2) the destruction of such drug or cosmetic preparations to which either color has already been added.

Manufacturers of new drugs and new animal drugs (including certifiable antibiotics for animal use) that contain D&C Red No. 19 or D&C Orange No. 17 may either dicontinue use of the color additives or substitute different color additives in accordance with the provisions of 21 CFR 314.70(b)(2)(i) and (d)(4) or 21 CFR 514.8(d)(3) and (e) as appropriate. If a substitute color additive is not used, the human drug manufacturer shall describe the change fully in the next annual report as required under § 314.81(b)(2)(iv)(*b*). If a substitute color additive is used, the manufacturer shall file with FDA a supplemental new drug application or a supplemental new animal drug application containing data describing the new composition and showing that the change in composition does not interfere with any assay or other control procedures used in manufacturing the drug, or that the assay and control procedures have been revised to make them adequate.

The applicant shall also submit data available to establish the stability of the revised formulation. If the data are too limited to support a conclusion that the drug will retain its declared potency for a reasonable marketing period, the applicant shall submit a commitment to test the stability of marketed batches at reasonable intervals, to submit to FDA those data as they become available, and to recall from the market any batch found to fall outside the approved specifications for the drug.

Each sponsor of a notice of claimed investigational exemption for a new drug (IND) or a notice of claimed investigational exemption for a new animal drug (INAD) containing one of the subject colors should promptly amend the IND or INAD to indicate that the color additives have been deleted or a different color substituted.

FDA is aware that supplies of alternative color additives and labeling may be difficult to obtain immediately. Consequently, drug and cosmetic labeling that states that the product contains "artificial color" or that specifically identifies D&C Red No. 19 and D&C Orange No. 17 may continue to be used with the uncolored product or product containing the alternative colors during the time necessary to obtain supplies of revised labeling or until July 17, 1989, whichever comes first.

VI. Economic and Environmental Impacts

The Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354) do not apply to actions of this type.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not

required. A copy of the FDA environmental assessment is on file with the Dockets Management Branch (address above).

List of Subjects

21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

21 CFR Part 81

Color additives, Cosmetics, Drugs.

21 CFR Part 82

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetics Act and under authority delegated to the Commissioner of Food and Drugs, Parts 74, 81, and 82 are amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 74 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

§ 74.1267 [Removed]

2. Section 74.1267 *D&C Orange No. 17* is removed.

§ 74.1319 [Removed]

3. Section 74.1319 *D&C Red No. 19* is removed.

§ 74.2267 [Removed]

4. Section 74.2267 *D&C Orange No. 17* is removed.

§ 74.2319 [Removed]

5. Section 74.2319 *D&C Red No. 19* is removed.

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

6. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note); 21 CFR 5.10.

7. Section 81.30 is amended by adding new paragraphs (r) (4) and (5), and (t) (3) and (4) to read as follows:

§ 81.30 Cancellation of certificates.

* * * * *

(r) * * *

(4) Certificates issued for D&C Red No. 19, its lakes, and all mixtures containing this color additive are cancelled and have no effect as pertains to its use in externally applied drugs and cosmetics after July 15, 1988, and use of this color in the manufacture of externally applied drugs or cosmetics after this date will result in adulteration.

(5) The agency finds, on the scientific evidence before it, that no action has to be taken to remove from the market externally applied drugs and cosmetics to which D&C Red No. 19 was added on or before July 15, 1988.

* * * * *

(t) * * *

(3) Certificates issued for D&C Orange No. 17, its lakes and all mixtures containing this color additive are cancelled and have no effect as pertains to its use in externally applied drugs and cosmetics after July 15, 1988, and use of this color in the manufacture of externally applied drugs or cosmetics after this date will result in adulteration.

(4) The agency finds, on the scientific evidence before it, that no action has to be taken to remove from the market externally applied drugs and cosmetics to which D&C Orange No. 17 was added on or before July 15, 1988.

PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

8. The authority citation for 21 CFR Part 82 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

§ 82.1267 [Removed]

9. Section 82.1267 *D&C Orange No. 17* is removed.

§ 82.1319 [Removed]

10. Section 82.1319 *D&C Red No. 19* is removed.

Dated: July 12, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–16041 Filed 7–14–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09–88–21]

Special Local Regulations: Detroit Jazz Festival Fireworks, Detroit River

AGENCY: Coast Guard, DOT.

ACTION: Final rule and request for comments.

SUMMARY: Special Local Regulations are being adopted for the Detroit Jazz Festival Fireworks Display. This event will be held on the Detroit River on September 2, 1988 from 9:00 P.M. to 10:00 P.M. In case of inclement weather, the event will be held on September 3, 1988. The regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: These regulations become effective on September 2, 1988 and terminate on September 3, 1988. Comments on this regulation must be received on or before *July 29, 1988.*

ADDRESSES: Comments should be mailed to Commander (inc), Ninth Coast Guard District, 1240 East 9th Street, Cleveland, OH 44199. The comments will be available for inspection and copying at the Ice Navigation Center, Room 2007A, 1240 East 9th Street, Cleveland, OH. Normal office hours are between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered.

FOR FURTHER INFORMATION CONTACT: MST2 SCOTT E. BEFUS, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522–3982.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until June 16, 1988, and there was not sufficient time remaining to publish proposed rules in advance of the event. Interested parties have, however, been previously notified of, and some have commented on, this event. Those comments were considered in preparing this regulation.

An opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "ADDRESS" in this preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments. Based upon comments received, the regulation may be changed. Comments must be received on or before July 29, 1988.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal

Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The drafters of this regulation are MST2 SCOTT E. BEFUS, project officer, Office of Search and Rescue and LCDR C. V. MOSEBACH, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Detroit Jazz Festival Fireworks Display will be conducted on the Detroit River on September 2, 1988. This event will have falling ash and debris and an unusually large concentration of spectator boats which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Group Detroit, MI).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35

2. Part 100 is amended to add a temporary section 100.35–0921 to read as follows:

§ 100.35–0921 Detroit Jazz Festival Fireworks Display, Detroit River.

(a) *Regulated Area:* (1) The following area will be closed to vessel navigation or anchorage for vessels of 65 feet in length or greater from 7:00 p.m. (local time) until 11:00 p.m. on September 2, 1988:

The U.S. waters of the Detroit River between the Ambassador Bridge and the downstream end of Belle Isle.

(2) The following portion of the Detroit River will be closed to all vessel traffic, from 8:00 p.m. (local time) until 11:00 p.m. on September 2, 1988:

The area bound on the south by the International Boundary, on the west by 83 degrees 3 minutes West, on east by 83 degrees 2 minutes West, and the north by the U.S. shoreline.

(b) *Special Local Regulations:*

(1) Vessels under 65 feet shall begin clearing the shipping channels at 11:00 p.m. local or when the fireworks display ends, whichever comes first.

(2) Fireworks barges will be moved to positions in the Detroit River after 6:30 p.m. on September 2, 1988, and will be removed immediately after the fireworks display. The barges will be located within 950 feet of the U.S. riverbank opposite each of the following landmarks: COBO HALL, VETERANS MEMORIAL BLDG., and the FORD AUDITORIUM. Vessel masters shall pass with caution. Each barge will be marked in accordance with rule 30 of the Inland Rules of the road for a vessel at anchor, and a fixed white light on each corner of the barges will be shown at night and an orange buoy with horizontal white bands will mark each special mooring.

(3) If the weather on September 2, 1988 is inclement, the fireworks display and the river closure will be postponed until 7:00 p.m. to 11:00 p.m. on September 3, 1988. If postponed, notice will be given on September 2, 1988 over the U.S. Coast Guard Radio Net.

(4) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels will be operated at a "no wake" speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(5) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(c) Effective Dates: This section is effective from 7:00 P.M. on September 2, 1988, to 11:00 P.M. on September 3, 1988.

Dated: July 5, 1988.

R. A. Appelbaum,

RADM, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 88–15914 Filed 7–14–88; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP Baltimore, MD Regulation 88–08]

Safety Zone Regulation; Patuxent River, Upper Chesapeake Bay

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule with request for comments.

SUMMARY: The Coast Guard Marine Safety Office Baltimore established a safety zone in the Patuxent River on June 22, 1988 to protect watercraft from hazards associated with the possible structural failure of the Governor Thomas Johnson Memorial Bridge, which crosses the river between Town Point and Johnstown, Maryland (COTP Baltimore, MD Regulation 88–07 not published in the **Federal Register**). This rule modifies the previous regulation. No person or vessel may enter, remain in, or anchor in this zone unless authorized by the Captain of the Port, Baltimore, Maryland, or his designated representative.

EFFECTIVE DATE: This regulation is effective from 4:00 p.m., June 23, 1988 to 8:00 a.m., September 20, 1988, unless sooner terminated by the Captain of the Port, Baltimore, Maryland.

ADDRESS: Comments should be mailed to Commanding Officer, U.S.C.G. Marine Safety Office, Custom House, 40 South Gay Street, Baltimore, Maryland 21202–4022.

FOR FURTHER INFORMATION CONTACT: Commander L.I. McClelland, Chief, Port Operations Department, (301) 962–5105.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after date of publication in the **Federal Register**. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to safeguard watercraft and their occupants and the surrounding waters during the effective dates.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "ADDRESS" in this preamble. Commenters should include their names and addresses, identify the docket numbers for the regulations, and give reasons for their comments. Based upon

comments received, the regulations may be changed.

Drafting Information

The drafters of this regulation are Lieutenant F.L. Propst, project officer for the Captain of the Port, Baltimore, Maryland, and Lieutenant R.K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

The incident requiring this regulation is the discovery by the State of Maryland Department of Transportation of the structurally unsound condition of the Governor Thomas Johnson Memorial Bridge crossing the Patuxent River between Town Point and Johnstown, Maryland. The State of Maryland has determined that the center span and four flanking spans on either side of the center span are structurally unsound. On June 22, 1988, the Captain of the Port, Baltimore, Maryland, responded to this discovery by issuing a safety zone encompassing the entire bridge (COTP Baltimore, MD Regulation 88–07). This regulation modifies Regulation 88–07 by reducing the size of the zone to cover only the area surrounding the center span and four flanking spans on either side of the center span. This action will minimize the hazards to any watercraft and their occupants in the event of structural failure of the bridge, while accommodating the reasonable needs of the boating public.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows.

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Section 165.T0548 is added to read as follows:

§ 165.T0548 Safety Zone: Patuxent River, Upper Chesapeake Bay, Maryland.

(a) *Location.* The following area is a safety zone: The waters of the Patuxent River enclosed by a line drawn between the following points: latitude 38°19'38.5" North, longitude 076°28'13.0" West; thence to latitude 38°19'31.0" North, longitude 076°28'12.5" West; thence to latitude 38°19'17.0" North, 076°28'28.0" West; thence to 38°19'25.0" North, 076°28'39.0" West; thence to 38°19'38.5" North, 076°28'24.0" West; and thence to the beginning.

(b) *Regulations.* (1) No person or vessel may enter, remain in, or anchor in, this zone unless authorized by the Captain of the Port, Baltimore, Maryland, or his designated representative.

(2) Any vessel operating within this zone shall comply with the directions of the Captain of the Port, Baltimore, Maryland, or his designated representative.

(c) *Effective date.* This regulation is effective from 4:00 p.m., June 23, 1988 to 8:00 a.m., September 20, 1988, unless sooner terminated by the Captain of the Port, Baltimore, Maryland.

Dated: June 23, 1988.

J.H. Parent,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 88–15913 Filed 7–14–88; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 222

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education

AGENCY: Department of Education.

ACTION: Notice of Suspension of Impact Aid Regulatory Provision.

SUMMARY: The Secretary of Education suspends, beginning with funds for Fiscal Year (FY) 1988 funds, the use of the methodology described in 34 CFR 222.100 for computing the maximum entitlement under section 2 of Pub. L. 81–874 (the Impact Aid law). This suspension is necessary so that the methodology is not in effect for FY 1988 only, since Congress has mandated the return in FY 1989 to the method used in FY 1987.

EFFECTIVE DATE: This suspension takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of the suspension, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Hansen, Director, Division of Impact Aid, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2107, Washington, DC 20202–6272 Telephone: (202) 732–3637.

SUPPLEMENTARY INFORMATION:

Background

A notice of proposed rulemaking (NPRM) to govern, in part, eligibility and entitlement determinations under section 2 of the Impact Aid program (Pub. L. 81–874) was published in the **Federal Register** on May 1, 1987, 52 FR 16144–16155. This proposed regulation was developed to provide information and guidance regarding the operation of section 2 for all LEAs applying for section 2 assistance and was proposed to take effect beginning with payments of FY 1988 funds.

One portion of the proposed regulations set forth a methodology for calculating maximum entitlements under section 2. Under that proposed methodology, which was a change from existing practice, the Secretary proposed to calculate section 2 maximum entitlements, beginning with FY 1988, by multiplying only the unequalized portion of a school district's local real property tax rate for school current expenditure purposes by the estimated current assessed value for the Federal property, rather than using the full tax rate in that calculation as had previously been done. This method was proposed in order to address more effectively the purpose of the Impact Aid program—which is to alleviate federally caused burdens on local educational agencies—by eliminating that portion of the section 2 payment that had duplicated compensation guaranteed to a school district by the State.

Many of the commenters who responded to the NPRM expressed concern over the administrative burden and fiscal disruption they felt were associated with the proposed calculation method. They indicated that the new method would result in significantly reduced section 2 payments and, in some cases, loss of section 2 eligibility altogether.

The final section 2 regulations published in the **Federal Register** on February 24, 1988, 53 FR 5552, responded to the concerns of commenters but incorporated as a final regulation the proposed method of using the unequalized portion of the tax rate to calculate section 2 maximum entitlements. However, on April 28, 1988, the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Pub. L. 100–297, was enacted. Those amendments contain a provision that preempts the regulatory method for

calculating section 2 maximum entitlements by mandating the use of the full local real property tax rate in that calculation.

Under Pub. L. 100–297, as originally enacted, this legislative provision would have taken effect on July 1, 1988, and would have applied to FY 1988 funding calculations—thus continuing previous practice and nullifying the regulatory provision. However, Pub. L. 100–351, enacted June 27, 1988, changes the general effective date for the Impact Aid provisions of Pub. L. 100–297 to October 1, 1988, governing payments beginning with FY 1989. The regulatory provision providing for use of only the unequalized portion of the local real property tax rate would therefore be effective for a one-year period, i.e., for FY 1988 funding, only.

The consequence of the regulations being effective for only one year is that State and local educational agencies would need to determine, on a one-time basis, the unequalized portion of their local real property tax rates. While making this determination may not be burdensome in some States, it now appears that it would require substantial effort in others. Furthermore, because this regulatory provision would cause significantly reduced section 2 entitlements for some section 2 applicants, and entire loss of section 2 eligibility for others, implementing it for a one-year period only could cause considerable fiscal disruption to a number of section 2 applicants.

The Secretary continues to believe that there is a sound basis for use of only the unequalized portion of the local real property tax rate in calculating section 2 maximum entitlements. However, in view of the congressional restriction on the use of that method beginning with FY 1989 funding, the Secretary believes the administrative burden and fiscal disruption to applicants to require use of the unequalized portion of the local real property tax rate to calculate section 2 maximum entitlements for only one year would outweigh the programmatic benefit. Therefore, the Secretary suspends the methodology contained in the regulations requiring use of the unequalized portion of the local real property tax rate to calculate section 2 maximum entitlements for payments from FY 1988 funds. *See* 34 CFR 222.97(a) and 222.100. Instead, the Secretary will, as a general non-binding policy, apply the previously used method of calculating section 2 maximum entitlements, i.e., the Secretary will use the full local real property tax rate for school current expenditure purposes for determining section 2 payment amounts for FY 1988.

If this suspension becomes effective before October 1, 1988 (i.e., during FY 1988), it will govern the Secretary's calculations of maximum entitlements under section 2 of Pub. L. 81–874 (the Impact Aid law) for FY 1988. If, because of congressional adjournments, this suspension does not become effective until on or after October 1, 1988, this suspension will be null and void and will have no effect on the calculation of section 2 maximum entitlements for FY 1988. In that case, the existing regulations (34 CFR 222.100) will govern section 2 maximum entitlement calculations for FY 1988.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. When the NPRM was published, the Secretary received a substantial number of comments opposing implementation of the regulatory provision regarding calculation of section 2 maximum entitlements. In addition, the method has been overturned by legislation that will be effective beginning with FY 1989 funding. As a result, the Secretary has determined that it would be administratively burdensome and fiscally disruptive to applicants to apply the regulatory provision regarding use of the unequalized portion of the local real property tax rate to calculate section 2 maximum entitlements for only one year. This document eliminates that requirement for FY 1988.

It is essential that this suspension take effect immediately so as not to affect the calculations of section 2 maximum entitlements for FY 1988. Under section 431(d) of the General Education Provisions Act, this suspension does not become effective until between 45 and 84 days after publication, depending upon congressional adjournments. Unless the suspension is effective on or before October 1, 1988, it will not affect FY 1988 funds, and the Secretary will be required to calculate section 2 maximum entitlements under the February 1988 regulations, using the unequalized portion of the local real property tax rate.

Because this suspension is beneficial to applicants and in accordance with the public comment that has been received, the Secretary does not anticipate that any further comment period would provide the Department with additional information or new comments. Suspending the regulatory provision would have the effect of allowing section 2 maximum entitlements to be calculated under the same methodology that the Congress has mandated beginning with FY 1989. Therefore, the Secretary has determined that publication of a proposed rule is impracticable, unnecessary, and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

This notice has been reviewed in accordance with Executive Order 12291. It is not classified as major because it does not meet the criteria for major regulations established in that order.

Regulatory Flexibility Act

The Secretary has determined that this notice will not have the type of effect on a sufficient number of small entities that would require analysis under the Regulatory Flexibility Act.

List of Subjects in 34 CFR Part 222

Education, Elementary and secondary education, Federally affected areas, Grant programs—education.

(Catalog of Federal Domestic Assistance No. 84.041, School Assistance in Federally Affected Areas—Maintenance and Operations)

PART 222—[AMENDED]

§ 222.100 [Suspended]

Therefore, § 222.100 is suspended.

Dated: July 11, 1988.

William J. Bennett,

Secretary of Education.

[FR Doc. 88–15910 Filed 7–14–88; 8:45 am]

BILLING CODE 4000-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–6

[FPMR Amdt. A–42]

Home-to-Work Transportation

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation establishes policy, agency responsibilities, and reporting requirements concerning official use of Government passenger carriers between residence and place of employment and provides guidance concerning the implementation of Pub. L. 99–550, which amends 31 U.S.C. 1344.

EFFECTIVE DATE: July 15, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. William Rivers, Fleet Management Division (703–557–1278).

SUPPLEMENTARY INFORMATION: This regulation has been developed in conjunction with an interagency working group of Federal vehicle fleet managers and reflects their views and comments.

During the review of this regulation, agencies should be aware of its possible income tax impact on their employees. Additional information is available in the Internal Revenue Service tax regulations, 26 CFR 1.61, Computation of Taxable Income.

Agency heads, as defined in the regulation, are allowed discretion to establish conditions and issue policies under which agency personnel may use home-to-work transportation in unusual circumstances which present a clear and present danger, emergencies, or compelling operational considerations. The intent of this regulation is to prevent abuse. This discretion, when exercised by the agency head, will ensure that an employee, acting responsibly while conducting official business, is protected in the reasonable, good faith use of a Government passenger carrier in unique or unpredictable circumstances.

The General Services Administration has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; of significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

This regulation was published as a proposed rule in the **Federal Register** on March 24, 1987 (52 FR 9448), requesting further comments from interested parties. In response to the proposed rule, comments were received from 14 agencies. After a careful review of the comments, GSA has decided to adopt several suggested changes and to reformat the regulation into 41 CFR Part 101–6, Miscellaneous Regulations. Suggestions which were not adopted are outlined below.

One agency recommended that the language in § 101–6.400 be consolidated and amended to remove the references to intelligence, counterintelligence, protective services, and criminal law enforcement duties, which are not subject to the regulation. Those references were not removed so that the regulation's applicability would be easily understood.

Another agency suggested that the language in § 101–6.400(b) was too broad and that the term "place of employment" needed to be further explained to avoid misinterpretation. Since the term is defined in § 101–6.401(f), it is not necessary to define it in another subsection.

Two agencies noted that the term "criminal law enforcement duties" is used in § 101–6.400(c) but is not defined. The term is not defined because it is beyond the scope of GSA's authority to regulate home-to-work transportation for employees who perform such duties. One agency asked if the exclusion included employees with intermittent law enforcement duties. The other agency inquired if auditors in the Office of the Inspector General were included in the exemption. These matters are not specifically addressed because it is each agency's responsibility to determine those duties which are criminal law enforcement in nature. It is also the agency's responsibility to prepare appropriate documentation if the agency determines that home-to-work transportation is required for employees who perform such duties. With respect to auditors, it may be more appropriate to determine them eligible for home-to-work transportation under the field work provision or under compelling operational considerations. The legislative history contained in *Congressional Record* S 15867 (daily ed. October 10, 1986) refers to the activities of investigators and auditors as being field work.

Agencies should note that even though this regulation may not apply to employees who perform intelligence, counterintelligence, protective services, or criminal law enforcement duties, 31 U.S.C. 1344 does not exempt agencies from controlling home-to-work transportation for such employees. Rather, the law requires agencies to prepare the same documentation for employees performing such duties as it does for employees performing field work.

Comments of three agencies on the definition of "passenger carrier" (§ 101–6.401(c)) were not adopted. One agency wanted to exempt vehicles which are in the custody of the Government for testing purposes, but not owned or leased by the Government. The statute refers to the expenditure of funds for maintenance, operation, or repair of passenger carriers. House of Representatives Report No. 99–451, 99th Cong., 1st Sess. (1985) states, on p. 5, that "the term includes those carriers procured outright and carriers that come into the possession of executive agencies by other means, such as by confiscation." Therefore, if an agency is using a vehicle owned by an entity other than the Government, but the agency is paying any of the costs associated with operating the vehicle, the provisions of this regulation apply to that vehicle.

The second agency asked if the regulation limited the coverage of motor vehicles strictly to sedans and station wagons. Although the law uses the term "passenger motor vehicle" as part of the definition of "passenger carrier," the legislative history leaves no doubt that all means of transporation are covered by the law. To clarify the statutory definition, the term "motor vehicle" is used in the regulation instead of "passenger motor vehicle."

The third agency suggested deleting the reference to passenger carriers in the custody of the Government through forfeiture or confiscation because forfeited vehicles are owned by the Government and confiscated vehicles cannot be used by the Government until forfeiture proceedings have been completed. Part of this reasoning is valid. However, congressional intent was to include passenger carriers in the possession of the Government through any means. By clarifying the definition to include forfeited and donated passenger carriers, as well as passenger carriers which have been purchased or leased (including non-TDY rentals) by the Government, the regulation better reflects the intent of Congress.

Comments from two agencies on the definition of "place of employment" (§ 101–6.401(f)) were not incorporated. One agency recommended shortening the definition to make it more concise and understandable. The resulting definition would not have adequately explained the extent of the coverage. Instead, other comments prompted the expansion of this definition to agree with Comptroller General decisions on the subject and to avoid misinterpretation.

The other agency wanted to replace the term "any place," which appears twice in the definition, with "the primary place," one term used in the committee report. The agency stated the definition conflicted with many previous definitions of "place of employment" and would apply to numerous situations such as assigned training or meetings. This recommendation could not be adopted since it directly conflicts with

long-established GAO opinions and with Congressional intent stated in the committee report and in Congressional Record H 10526 (daily ed. October 15, 1986) that an employee is responsible for his/her daily commuting costs to any place within the local commuting area where the employee is assigned to work. The need for an employee to attend a meeting, training, or any other official function at a location within the same commuting area as his/her primary work location cannot be considered as justification for providing a Government passenger carrier to transport the employee to such a site from his/her residence.

Comments from three agencies concerning the definition of "field work" (§ 101–6.401(g)) were partially adopted. One agency recommended deleting the term "itinerant-type travel" because it means an employee would need to visit two or more work sites away from his/her place of employment in order for an agency to be able to authorize any vehicle usage to or from a residence. To be in conformance with GAO decisions, an employee would need to make two or more stops if the sites are within the local commuting area before he/she can be eligible for home-to-work transporation under the field work provision. The agency's comment is valid only for single site visits outside the commuting area. Therefore, the definition has been modified to specify that itinerant-type travel involves visits to two or more work sites inside the local commuting area.

The second agency suggested deletion of the term "itinerant-type travel" and the entire last sentence in § 101–6.401(g) to clarify the definition. Removal of that language would open the definition to misinterpretation and cause confusion as to the intent of the law. Therefore, the suggestion was not adopted.

The third agency wanted to include in the definition of field work the testing and evalutation of vehciles during various traffic conditions, including nighttime and rush-hour conditions. This would allow an employee to perform the evaluation by driving a test vehicle home at the end of the work day and returning the vehicle the following morning. While the argument may be valid for increasing the efficiency and economy of the Government by allowing the evaluation to be done after the employee's normal workday, it does not fit the Congressional definition of field work. Approval of such home-to-work transportation is more appropriate under the compelling operational considerations provision.

One agency felt it appropriate to change the word "critical" to "essential" for describing employees in the definition of "emergency" (§ 101–6.401(i)) since the word "essential" is used in the committee report. While the suggestion has some merit, there must be a differentiation between the term used in this definition and the terms "essential" and "nonessential" used for determining who stays at, or reports to, work during hazardous weather simply to answer the telephone or perform other non-critical functions. Therefore, the definition has been rewritten and expanded to incorporate GAO opinions which impart the need for an agency to provide an uninterrupted essential service and there is no other way for those employees to get to work other than by Government-provided home-to-work transportation.

One agency recommended rewording the definition of "compelling operational considerations" (§ 101–6.401(j)) to remove the inference that this exemption is limited to life and death situations, and to delete the requirement that the home-to-work transportation be "essential to the successful accomplishment of the agency's mission." This recommendation has been partially implemented by a complete rewrite of the definition. However, the law specifically states that such transportation must be "essential to the conduct of official business." Therefore, that language is used in the revised definition.

Three agencies had comments regarding the "logs or other records" referenced in § 101–6.403(a). The first agency suggested adding the word "local" before the word "logs" in the first sentence. Rather than requiring all agencies to keep the logs or other records at the local level, the regulation was rewritten to allow agencies to determine the best location for such records to be kept.

The second agency recommended deletion of the seven items identified for collection on the logs or records because such detailed recordkeeping places an undue burden on the agencies. The requirement for the logs or other records was added by the Senate and, therefore, is not addressed in the committee report. However, the legislative history contained in *Congressional Record* S 15866–15867 (daily ed. October 10, 1986) addresses the subject. The intent of the requirement was to allow GAO to effectively monitor agency compliance with the statute. Because of the desire for uniformity among the agencies, the referenced items should be the minimum information required on the logs or other records.

The third agency, in order to assure the broad exemptions afforded law enforcement agencies by Pub. L. 99–550, wanted the regulation to state that maintenance of logs or recordkeeping shall not apply to law enforcement agencies. This suggestion was not adopted for two reasons. First, it is outside the scope of GSA's authority to regulate the requirements for home-to-work transportation in the performance of law enforcement duties as outlined in § 101–6.400(c). Second, the law does not exempt such agencies from maintaining logs or other records necessary to establish the official purpose of home-to-work transportation. Subsection 1344(f) of title 31, United States Code, which states the requirement for the recordkeeping, applies to all agencies covered by the law. Also, the legislative history makes clear the intent of Congress that each agency must maintain adequate records of such transportation.

Eight agencies had comments on § 101–6.403 (b) and (c). Seven agencies stated that both subsections should be rewritten to specifically allow the agency head to delegate the authority to determine which employees are eligible for home-to-work transportation. They stated that the approval process was cumbersome, time consuming, and did not allow for immediate local approval in response to emergencies or changing operational requirements. Due to the wide geographic dispersion of their employees and the problem in obtaining a timely approval from the agency head, they reasoned that a more practical approach would be to allow for delegation of authority to a more appropriate level or to permit post-approvals rather than require prior approvals. One agency cited the committee report in its interpretation that delegation of authority is allowed for determining eligible employees under the field work provision.

The statute does not allow for delegation of such authority. Subsection 1344(d)(3) of title 31, United States Code, states in relevant part that "the authority to * * * make determinations pursuant to subsections (a)(2) * * * and (b)(8) of this section and pursuant to (subsection (d)(2)) * * * may not be delegated * * *." Subsection (a)(2) permits home-to-work transporation that is required for the performance of field work, when approved in writing by the head of the agency. Subsections (b)(8) and (d)(2) apply to determinations involving highly unusual circumstances which present a clear and present danger, emergencies, and compelling operational considerations. Therefore, the regulation does not allow the agency head to delegate the authority to

approve home-to-work transportation. The agency interpretation of the committee report is not valid because the report was written for the original bill, H.R. 3614, which did not prohibit delegation of authority to determine eligible employees under the field work provision. The Senate amended the original bill in several places, including the provision in issue, and the final version which was signed into law clearly does not allow for delegation of the agency head's authority.

One agency requested deletion of the requirement of § 101–6.403(b) to recertify the field work determinations annually since such a requirement is not imposed by the law or expressed in the committee report. The requirement for renewing determinations on a periodic basis conveys the intent of Congress contained in *Congressional Record* S 15866 (daily ed. October 10, 1986) that the regulations for home-to-work transportation contain appropriate safeguards against abuse. Without a system to monitor and reevaluate field work determinations, and agency could allow unwarranted or improper passenger carrier use to occur. However, GSA agrees that the benefits of an annual recertification may be outweighted by the administrative burden of such a frequent review. Therefore, the final rule requires a biennial recertification with more frequent updates as necessary.

One agency suggested that § 101–6.403(c) include a requirement for agencies to provide to GSA a copy of each determination submitted to Congress. This is not necessary since the determinations will be supplied to two Congressional committees and also be available within each agency for audit.

Two agencies recommended increasing the duration of determinations for circumstances which present a clear and present danger, emergencies, and compelling operational considerations under § 101–6.403(c) to reduce the administrative burden. The law is specific about maximum durations and the regulation must reflect those same durations.

One agency suggested that the reports to Congress, as specified in § 101–6.404, be submitted annually instead of quarterly to make the reporting process less cumbersome. The law requires the agency to report promptly to Congress each determination prepared for a clear and present danger, an emergency, or a compelling operational consideration. The committee report states that the information should not be held for consolidation if such holding would make the report not prompt. Since the maximum duration of an extended determination is 90 days, the requirement for prompt notification would not be met by an annual report.

One agency recommended including in § 101–6.404 a requirement for agencies to report to Congress any determinations allowing home-to-work transportation for a single principal deputy as specified in 31 U.S.C. 1344(b)(2)(B). Although this is a requirement for agencies to meet, it is not appropriate to include in the regulations. The law authorizes GSA to promulgate regulations to govern home-to-work transportation only for field work, highly unusual circumstances presenting a clear and present danger, emergencies, and compelling operational considerations. However, the FPMR amendment which will transmit the regulation contains a reminder that agencies need to report to Congress such determinations for a single principal deputy in accordance with 31 U.S.C. 1344(d)(4).

One agency expressed concern over the language of the committee report quoted in § 101–6.405(a). The report states that the field work exemption cannot be used when the employee's workday begins at the official duty station. The agency stated that this prohibition may impinge upon the efficiency and economy of their operations. A change to the regulation would be contrary to Congressional intent. However, the agency may be able to justify home-to-work transportation in such cases using the provisions for compelling operational considerations if a substantial increase in an agency's efficiency and economy would result.

One agency suggested that the regulations require employees of contractors to meet the same restrictions for home-to-work transportation if the contract provides for use of Government vehicles. Such coverage is not necessary in this regulation because use of Government-furnished vehicles by contractors is included in FPMR 101–38.3 (41 CFR 101–38.3) and will be included in a future change to the Federal Acquisition Regulation (48 CFR Parts 1–51).

The same agency suggested inclusion of a reference to an employee's income tax liability when he/she is provided with home-to-work transportation. While it is true that the value of the home-to-work transportation may be considered by the Internal Revenue Service to be a fringe benefit and, therefore, taxable income, there is nothing in Pub. L. 99–550 which gives GSA the authority to regulate, or include in the regulation, the imputation of income. However, reference to the income tax issue is included in the supplementary information published with the regulation in the **Federal Register** and in the FPMR amendment which will transmit the regulation.

List of Subjects in 41 CFR Part 101–6

Government property management, Home-to-work transportation.

PART 101–6—MISCELLANEOUS REGULATIONS

1. The authority citation for Part 101–6 is added to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); 31 U.S.C. 1344(e)(1).

2. The table of contents for Part 101–6 is amended by adding Subpart 101–6.4 to read as follows:

Subpart 101–6.4—Official Use of Government Passenger Carriers Between Residence and Place of Employment

101–6.400 Scope and applicability.
101–6.401 Definitions.
101–6.402 Policy.
101–6.403 Agency responsibilities.
101–6.404 Reports.
101–6.405 Additional guidance.

3. Part 101–6 is amended by adding new Subpart 101–6.4 to read as follows:

Subpart 101–6.4—Official Use of Government Passenger Carriers Between Residence and Place of Employment

§ 101–6.400 Scope and applicability.

(a) All Federal agencies and entities, as defined in § 101–6.401(a), in the executive, judicial, and legislative branches of the Government are subject to this regulation, with the exception of the Senate, House of Representatives, Architect of the Capitol, and government of the District of Columbia.

(b) This subpart applies to the use of home-to-work transportation for employees on normal duty (non-travel) status performing assigned duties at their place of employment. This subpart does not apply to the use of a Government passenger carrier when the passenger carrier is used in conjunction with official travel to perform temporary duty (TDY) assignments away from a designated or regular place of employment.

(c) This subpart does not apply to those employees essential for the safe and efficient performance of intelligence, counterintelligence, protective services, or criminal law enforcement duties, when those employees have been so designated in writing by the head of a Federal agency. Each Federal agency which uses

Government passenger carriers to perform such duties or services should issue guidance concerning the use of home-to-work transportation by its employees.

§ 101-6.401 Definitions.

For purposes of this regulation, the following definitions apply:

(a) "Federal agency" means:

(1) A department (as such term is defined in section 18 of the Act of August 2, 1946 (41 U.S.C. 5a));

(2) An executive department (as such term is defined in 5 U.S.C. 101);

(3) A military department (as such term is defined in 5 U.S.C. 102);

(4) A Government corporation (as such term is defined in 5 U.S.C. 1031));

(5) A Government controlled corporation (as such term is defined in 5 U.S.C. 103(2));

(6) A mixed-ownership Government corporation (as such term is defined in 31 U.S.C. 9101(2));

(7) Any establishment in the executive branch of the Government (including the Executive Office of the President);

(8) Any independent regulatory agency (including an independent regulatory agency specified in 44 U.S.C. 3502(10));

(9) The Smithsonian Institution;

(10) Any nonappropriated fund instrumentality of the United States; and

(11) The United States Postal Service.

(b) "Head of agency" means the highest official of a Federal agency.

(c) "Passenger carrier" means a motor vehicle, aircraft, boat, ship, or other similar means of transportation that is owned or leased (including non-TDY rentals) by the United States Government, or has come into the possession of the Government by other means, including forfeiture or donation.

(d) "Employee" means a Federal officer or employee of a Federal agency and includes an officer or enlisted member of the Armed Forces.

(e) "Residence" means the primary place where an employee resides and from which the employee commutes to his/her place of employment. The term "residence" is not synonymous with "domicile" as that term is used for taxation or other purposes, nor does this regulation affect the provisions set forth in the Federal Travel Regulations for employees on temporary duty (TDY) away from their designated or regular place of employment.

(f) "Place of employment" means any place within the accepted commuting area as determined by the agency for the locality involved, where an employee performs his/her business, trade, or occupation, even if the employee is there only for a short period of time. The term includes, but is not limited to, an official duty station, home base, headquarters, or any place where an employee is assigned to work, including locations where meetings, conferences, or other official functions take place.

(g) "Field work" means official work performed by an employee whose job requires the employee's presence at various locations that are at a distance from the employee's place of employment (itinerant-type travel involving multiple stops within the accepted local commuting area, or use outside that area) or at a remote location that is accessible only by Government-provided transportation. The designation of a work site as a "field office" does not, of itself, permit the use of a Government passenger carrier for home-to-work transportation. (See § 101-6.405.)

(h) "Clear and present danger" means those highly unusual circumstances which present a threat to the physical safety of the employee's person or property under circumstances where:

(1) The danger is—

(i) Real, not imaginative, and

(ii) Immediate or imminent, not merely potential; and

(2) A showing is made that the use of a Government passenger carrier would provide protection not otherwise available.

(i) "Emergency" means those circumstances which exist whenever there is an immediate, unforeseeable, temporary need to provide home-to-work transportation for those employees who are necessary to the uninterrupted performance of the agency's mission. An emergency may occur where there is a major disruption of available means of transportation to or from a work site, an essential Government service must be provided, and there is no other way to transport those employees.

(j) "Compelling operational considerations" means those circumstances where the provision of home-to-work transportation to an employee is essential to the conduct of official business or would substantially increase a Federal agency's efficiency and economy. Home-to-work transportation may be justifiable if other available alternatives would involve substantial additional costs to the Government or expenditures of employee time. These circumstances need not be limited to emergency or life and death situations.

§ 101-6.402 Policy.

(a) Each Federal agency shall ensure that Government passenger carriers operated by its employees are used for official purposes only; i.e., to further the mission of the agency.

(b) Each Federal agency shall limit the use of Government passenger carriers between an employee's residence and his/her place of employment to:

(1) Those persons, including the President, the Vice-President, and other principal Federal officials and their designees, as provided in 31 U.S.C. 1344 (b)(1) through (b)(7); or

(2) Those persons engaged in field work as defined in § 101-6.401(g).

(c) Other than those uses provided for in § 101-6.402(b), a Federal agency shall only authorize the use of a Government passenger carrier for home-to-work transportation when there is:

(1) A clear and present danger;

(2) An emergency; or

(3) A compelling operational consideration.

(d) The comfort and convenience of an employee shall not be considered sufficient justification for an agency to authorize home-to-work transportation under § 101-6.402 (b) or (c).

(e) Each Federal agency shall consider the location of the employee's residence prior to authorizing home-to-work transportation. Such transportation shall be authorized only within the usual commuting area for the locale of the employee's place of employment.

(f) An employee authorized home-to-work transporation may elect to share space in a Government passenger carrier with other individuals on a space available basis, provided that the passenger carrier does not travel additional distances as a result, and provided such sharing is consistent with his/her agency's policy. When an agency establishes its space sharing policy, it should consider the effects of its potential liability for and to those individuals. If an employee is authorized transportation between his/her residence and an official duty site, this privilege does not extend to his/her spouse, other relatives, or friends unless—

(1) It is consistent with the agency's policy,

(2) They are with the employee when he/she is picked up, and

(3) They are transported to the same place or event.

(g) The head of each Federal agency shall authorize the use of home-to-work transportation only to the extent that such transportation will substantially increase the efficiency and economy of the Government.

§ 101-6.403 Agency responsibilities.

(a) Each Federal agency shall maintain logs or other records necessary

to establish that any home-to-work transportation was used for official purposes. The agency may determine the organizational level at which the logs should be maintained and kept. The logs or other records should be easily accessible for audit and should contain the following information:

(1) Name and title of employee (or other identification, if confidential) using the passenger carrier;

(2) Name and title of person authorizing use;

(3) Passenger carrier identification;

(4) Date;

(5) Location;

(6) Duration; and

(7) Circumstances requiring home-to-work transportation.

(b) The head of each Federal agency shall determine which employees are eligible to use home-to-work transportation in accordance with the definition of field work in § 101–6.401(g) and the guidance contained in § 101–6.405. Determinations must be in writing and must be accomplished as soon as practicable, but not later than 90 days from the effective date of the issuance of the regulations as a final rule. Determinations should be updated as necessary and must be recertified at least every 2 years thereafter. The authority to make determinations may not be delegated.

(c) When circumstances described in § 101–6.402(c) apply, the head of a Federal agency shall make a written determination, containing the following information: Name (or other identification, if confidential) and title of the employee; the reason for authorizing home-to-work transportation; and the anticipated duration of the authorization. The authority to make a determination may not be delegated. The determination should be completed before the employee is provided with home-to-work transportation. In some cases, an agency may wish to have certain employees ready to respond immediately when those circumstances arise without warning. To meet those events, the head of an agency may approve a contingency determination. Such a determination should include the names of authorized individuals or positions, the situation(s) upon which the provision of home-to-work transporation is contingent, and administrative controls. When it is used to provide an employee with home-to-work transportation, the contingency determination must be supplemented with the following information on the specific situation if it is not already part of the contingency determination: Name (or other identification, if confidential) and title of the employee; the reason that justified using the contingency determination; and the starting date and ending date (or anticipated ending date) of the authorization.

(1) Each determination and contingency determination must be submitted to Congress in accordance with procedures set forth in § 101–6.404. When a contingency determination is exercised, supplemental information on the specific situation, as outlined in paragraph (c) of this section, must also be provided to Congress. Such documentation must be easily available within the agency for audit. Additional guidance concerning determinations is contained in § 101–6.405.

(2) The initial duration of a determination shall not exceed 15 calendar days. Should the circumstances justifying home-to-work transportation continue, the head of a Federal agency may approve a subsequent determination of not more than 90 additional calendar days. If at the end of the subsequent determination, the underlying circumstances continue to exist, the head of the Federal agency may authorize an additional extension of 90 calendar days. This process may continue as long as required by the circumstances.

§ 101–6.404 Reports.

Each initial determination and contingency determination, as well as supplemental information on each situation where a contingency determination is exercised, prepared under § 101–6.403(c) shall be submitted to Congress promptly, but not later than 60 calendar days after approval. An agency may consolidate any subsequent determinations into a single report and submit them quarterly. Determinations and reports shall be sent to:

Chairman, Committee on Governmental Affairs, United States Senate, Suite SD–340, Dirksen Senate Office Building, Washington, DC 20510.

Chairman, Committee of Governmental Operations, United States House of Representatives, Suite, 2157, Rayburn House Office Building, Washington, DC 20515.

§ 101–6.405 Additional guidance.

(a) House of Representatives Report No. 99–451 99th Cong., 1st Sess. (1985) clearly indicates the intent of Congress to eliminate abuse of home-to-work transportation. The report notes, on p. 7, that:

> The provision for "field work" is meant to cover an employee of [a Federal] agency whose job requires the employee's presence at various locations that are at a distance from [the employee's] place of employment * * *. Examples of such employees include, but are not limited to, mine inspectors, meat inspectors, and certain other law enforcement officers, whose jobs require travel to several locations during the course of a workday. However, the field work exception may not be used (1) when the [employee's] workday begins at his or her official [G]overnment duty station, or (2) when the [employee] normally commutes to a fixed location, however far removed from his or her official duty station (for example, auditors or investigators assigned to a defense contractor plant). Although their daily work station is not located in a [G]overnment office, these [employees] are not performing "field work" * * *. Like all [G]overnment employees, [employees] working in a "field office" are responsible for their own commuting costs.

The report also states in the same section that the legislation is intended to allow home-to-work transportation for medical officers on outpatient service. The guidelines contained in the report, as well as the *Congressional Record* (daily ed. October 10, 1986, pp. S 15865–15868), should provide an adequate basis for an agency to determine which of its employees may be authorized home-to-work transportation.

(b) Additional examples of employees who may perform field work include, but are not limited to, quality assurance inspectors, construction inspectors, customs inspectors, dairy inspectors, revenue officers, compliance investigators, and personnel background investigators. The assignment of an employee to such a position does not, of itself, entitle an employee to receive daily home-to-work transportation. When authorized, such transportation should be provided only on days when the employee actually performs field work, and then only to the extent that such transportation will substantially increase the efficiency and economy of the Government.

(c) Instances may occur when an employee, by the nature of his/her job, is designated as being authorized home-to-work transportation under the field work provision. However, circumstances may require that field work only be performed on an intermittent basis. In those instances, the agency shall establish procedures to ensure that a Government passenger carrier is used only when field work is actually being performed.

(d) In making field work determinations under § 101–6.403(b), an agency head may elect to designate positions rather than individual names, especially in positions where rapid turnover occurs. The determination should contain sufficient information, such as the job title, number, and operational level where the work is to be performed (i.e., five recruiter

personnel or positions at the Detroit Army Recruiting Battalion) to satisfy an audit, if necessary.

(e) Situations may arise where it is more cost-effective for the Government to provide an employee a vehicle for home-to-work transportation rather than have the employee travel a long distance to pick up a vehicle and then drive back toward or beyond his/her residence to perform his/her job. In those situations agencies should consider basing the vehicle at a Government facility located near the employee's job site. If such a solution is not feasible, an agency must then decide if the use of the vehicle should be approved under the compelling operational considerations definition. Home-to-work transportation in such cases may be approved only if other available alternatives would involve substantial cost to the Government or expenditure of substantial employee time.

Dated: July 7, 1988.

John Alderson,

Acting Administrator of General Services.

[FR Doc. 88-15758 Filed 7-14-88; 8:45 am]

BILLING CODE 6820-24-M

---

41 CFR Part 101-41

[FPMR Amdt. G-87]

Prepayment Transportation Audit Procedures

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule; correction.

SUMMARY: This notice corrects the prepayment audit delegation conditions which appeared in the **Federal Register** on July 5, 1988 (53 FR 25162).

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Collections, Accounts, and Procedures Division, Office of Transportation Audits, Office of the Controller, (202) 786-3065 or FTS 786-3065.

SUPPLEMENTARY INFORMATION: The prepayment transportation audit procedures published in the **Federal Register** on July 5, 1988, contained an error on page 25165 in § 101-41.103(e). Section 101-41.103(e) is correctly added to read as follows.

* * * * *

§ 101-41.103 [Amended]

(e) The request shall contain a mechanism to report savings, on a semi-annual basis and in a manner acceptable to GSA, accomplished by identifying overcharges/overbillings, or other savings indicating the program is cost-effective or otherwise in the public interest.

Dated: July 8, 1988.

Leonard Yonkler,

Controller, Federal Supply Service.

[FR Doc. 88-15950 Filed 7-14-88; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 674

[Docket No. 80630-8130]

High Seas Salmon Fishery Off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) closes the commercial fishery for chinook salmon throughout the exclusive economic zone (EEZ) off Southeastern Alaska and closes a small part of this area, the "Fairweather Grounds" to all commercial salmon fishing. This action is necessary to conserve chinook salmon stocks. The intent of this action is to ensure that the harvest of chinook salmon does not exceed the limit imposed by the Pacific Salmon Treaty. This action complements similar closures of the commercial troll fishery in waters managed by the State of Alaska.

DATE: This notice is effective from 11:59 p.m. Alaska Daylight Time (ADT), July 12, 1988, until 12 midnight, September 20, 1988. Public comments are invited until August 11, 1988.

ADDRESSES: Send comments to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1688. During the 30-day public comment period, the data upon which this notice is based will be available for public inspection during the hours of 8:00 a.m. to 4:30 p.m. (ADT) Monday through Friday at the NMFS Regional Office, Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Aven M. Andersen (Fishery Management Biologist, NMFS), 907-586-7229.

SUPPLEMENTARY INFORMATION: This notice implements the Pacific Salmon Treaty and the Fishery Management Plan for the High Seas Salmon Fishery off the Coast of Alaska (FMP). The FMP was developed and amended by the North Pacific Fishery Management Council. The regulations (50 CFR Part 674) govern the salmon fisheries in the EEZ off the coast of Alaska east of 175° E. longitude. They were issued under section 7(a) of Pub. L. 99-5, the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3631 *et seq.*) and under section 305 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Closure of the Troll Chinook Fishery

The Pacific Salmon Commission limited the 1988 harvest by all salmon fisheries in Southeast Alaska to 263,000 chinook salmon, exclusive of the harvest of chinook salmon resulting from Alaska's new enhancement activities. These activities added about 27,000 chinook, bringing the total to about 290,000 chinook.

Of this number, the Alaska Board of Fisheries set the guideline harvest level for the 1988 summer troll fishery at 173,000 chinook. That number was derived by deducting from the 290,000 the following: 20,000 for the net fisheries; 22,000 for the sport fisheries; 62,000 for the winter troll fishery; 5,000 for the spring experimental troll fishery; and 8,000 for new Alaska hatchery chinook salmon expected to be taken by fisheries other than the troll fishery. The remainder is the guideline of 173,000 chinook for the summer troll fishery. Overall, the troll fishery (winter, experimental, and summer) was allocated about 221,000 chinook.

On July 1, 1988, NMFS issued a final rule to announce the chinook harvest limit and set fishing periods for the 1988 commercial troll fishery in the EEZ (53 FR 25492 July 7, 1988). This rule allowed the troll harvest of chinook salmon to begin on July 1 and continue until the chinook harvest guideline of 221,000 for the troll fishery was reached (50 CFR 674.21(a)(2)(i)).

Counts, estimates, and forecasts made by the Alaska Department of Fish and Game (ADF&G) show that the summer commercial salmon troll fishery will have harvested 154,400 chinook salmon through July 11,1988. Based on (1) the harvest to date, (2) an average daily catch rate by the troll fleet of about 13,000 chinook per day, and (3) allowing for some unreported harvests, NMFS and ADF&G predict that the guideline harvest level of 173,000 will be reached by midnight July 12, 1988. Thus, the troll harvest of chinook salmon must stop at that time.

Closure of the Fairweather Grounds

A provision of the Pacific Salmon Treaty requires that each party to the treaty "minimize * * * all sources of induced fishing mortality * * * of chinook salmon" (annex 4, chapter 3,

paragraph 1(e)). In a move to achieve this requirement, the Alaska Board of Fisheries and the North Pacific Fishery Management Council expressed their desire to minimize the incidence of chinook salmon hook-and-release during any chinook-only closures that may be necessary to manage the chinook salmon harvest to the desired level. Therefore, the ADF&G and the Secretary are closing certain areas known to have high numbers of chinook salmon to commercial fishing for all salmon species.

These areas are places where adult and juvenile chinook salmon concentrate. If they were left open to commercial salmon fishing, a large number of chinook would be caught and released, with a resulting substantial incidental mortality of those released.

The Secretary closes to all commercial salmon fishing the area of the EEZ known as the Fairweather Grounds. It is roughly rectangular and is bounded by lines connecting the following points:

58°46.7′ N. Latitude, 138°54.5′ W. Longitude
58°24.5′ N. Latitude, 139°48.8′ W. Longitude
57°50.0′ N. Latitude, 138°19.5′ W. Longitude
58°15.9′ N. Latitude, 137°21.5′ W. Longitude

The following Loran C lines are provided as estimates of the boundary lines at the request of fishermen. The closed area is roughly bounded on the northwest by Loran C line 7960–Y–29800, on the seaward side by Loran C line 7960–X–14400, and on the southeast by Loran C lines 7960–Y–29150, and on the shoreward side by Loran C line 7960–X–14660. Refer to NOAA chart 16760.

This action is authorized by § 674.23 of the regulations, which provides that the Secretary may modify the fishing periods and areas by publishing a notice in the **Federal Register**. Any such modification, however, must be based on a determination by the Director of the Alaska Region of NMFS (Regional Director) that (a) the condition of a salmon species is "substantially different from the condition anticipated in the FMP" and (b) this difference requires a modification of the fishing times and areas to adequately conserve that salmon species. The regulations specify the factors the Regional Director may consider. The regulations also specify that the Secretary may consult with the ADF&G before he makes his modifications.

In view of these requirements, the Regional Director (acting on behalf of the Secretary) has consulted with the ADF&G. Also, he has reviewed the information on the 1988 salmon fishery to date, has determined that the chinook stocks in 1988 are substantially different from the condition anticipated in the FMP, and has determined that this difference in stock condition requires that, in conjunction with area closures made by the ADF&G, he needs to close the Fairweather Grounds to all commercial salmon fishing as of 11:59 p.m. (ADT) on July 12, 1988.

These closures will become effective after they have been broadcast over VHF channel 16 and publicized for 48 hours through ADF&G procedures.

Possibility of Reopening the Troll Chinook Fishery

After the closure, the actual troll harvests of chinook will be tabulated and the number from Alaska's new enhancement activities will be determined. If the total number of chinook harvested by the trollers falls considerably short of the harvest guideline, then the troll fishery will be reopened to allow harvest of the remainder of its allotment before the troll season closes on September 20.

Classification

This action is exempt from sections 4 through 8 of the Administrative Procedure Act, the Regulatory Flexibility Act, and Executive Order 12291 because, as is expressly provided in section 7(a) of Pub. L. 99–5, it involves a foreign affairs function. It contains no requirement for collecting information for purposes of the Paperwork Reduction Act.

Section 674.23(b)(3) of the rule implementing the FMP requires the Secretary to accept and consider public comments for 30 days after the effective date of this notice. The aggregated data upon which this closure was based are available for public inspection at the address given above. If comments are received, the Secretary will reconsider the necessity for this action and will publish another notice in the **Federal Register** either confirming the notice's continued effect, modifying it, or rescinding it, unless the notice has already expired or been rescinded for other reasons.

List of Subjects in 50 CFR Part 674

Administrative practice and procedure, Fish, Fisheries, Fishing, International organizations.

(16 U.S.C. 3631 *et seq;* 16 U.S.C. 1801 *et seq.*)

Dated: July 12, 1988.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–16006 Filed 7–12–88; 4:45 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 53, No. 136
Friday, July 15, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

Credit for CHAMPUS Coverage for the Purpose of Continuing an FEHB Enrollment During Retirement

AGENCY: Office of Personnel Management.

ACTION: Notice of withdrawal of proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) is withdrawing its proposal to discontinue allowing credit for time covered under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) for the purpose of continuing a Federal Employees Health Benefits (FEHB) enrollment during retirement. The proposed regulations, published May 21, 1987 (52 FR 19152), would have discontinued the administrative practice of substituting CHAMPUS coverage for FEHB coverage, with respect to the requirement for continuation of FEHB coverage during retirement. Recent developments, including the need to reform the structure of the FEHB program, have convinced OPM to withdraw the proposed regulations. Any further consideration of this issue is being deferred until further study and plans for FEHB reform are completed.

FOR FURTHER INFORMATION CONTACT: Bill Smith, (202) 632–4634.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 88–15939 Filed 7–14–88; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 180

[No. AMS–LS–88–022]

Plant Variety Protection Act: Increase of Certification Fee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Plant Variety Protection Act of 1970, as amended, authorizes the Secretary of Agriculture to prescribe, charge, and collect reasonable fees for costs incurred in the issuance of plant variety protection certificates. This amendment proposes to increase such fees to more accurately reflect costs of different services and to make the administration of the certification program substantially self-supporting.

DATES: Comments must be received on or before August 15, 1988.

ADDRESS: Written comments may be mailed to Kenneth H. Evans, Commissioner; Plant Variety Protection Office; Livestock and Seed Division; Agricultural Marketing Service; U.S. Department of Agriculture; Room 500, National Agricultural Library Building; Beltsville, Maryland 20705. Comments will be available for public inspection at this location during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Evans (301/344–2518).

SUPPLEMENTARY INFORMATION: The Plant Variety Protection Act of 1970, as amended, (7 U.S.C. 2321 *et seq*), provides for the assessment and collection of reasonable fees for expenses incurred by the Department of Agriculture in the issuance of plant variety protection certificates and related services. The Act has recently been amended to provide that fees, including late payments and accrued interest, shall be credited to the account that accrues the costs and shall remain available without fiscal year limitation to pay the costs incurred. Present fees will not cover the projected costs for fiscal year 1988. Therefore, the Department proposes (1) to increase total fees for processing an application to $2,400 and (2) to adjust the schedule of other fees to more accurately reflect the costs incurred by the Department for providing different services under the Act.

This proposed rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1, and has been determined to be "non-major." It will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in production costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; nor will it have a significant effect on competition, employment, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of the Agricultural Marketing Service has determined that this rule would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*), because (1) the fee represents a minimal increase in the costs of developing and producing a new variety for the commercial market; and (2) competitive effects are offset under this voluntary program since charges are based on volume (i.e., the cost to users varies in proportion to the number of applications submitted).

From fiscal year 1981 to fiscal year 1984, the cost of processing an application was reduced from approximately $3,600 to $2,000; and fees were increased from $750 to $1,500, and then in 1984, to $2,000 to make the program self-supporting. From the time of the 1984 fee increase to fiscal year 1988, operating costs attributed to the program have risen 35 percent. Contributing to this overall rise in costs have been the following specific cost increases: 28 percent for salaries, 104 percent for retirement and other benefits, 67 percent for rent and maintenance, 33 percent for overhead, and 10 percent for depreciation. A substantial amount of this increased expense has been absorbed by improved productivity. For example, when calculated on a per-employee year basis, the Plant Variety Protection Office staff increased productivity by 44 percent in fiscal year 1986 when compared with fiscal year 1985—and 113 percent over fiscal year 1982. This significant improvement was due in large part to the use of new computers. However, in spite of these major gains, projected revenues for 1988 are estimated to be 20 percent below projected costs.

On September 22, 1987, the Plant

Variety Protection Advisory Board (Board) met and was provided information concerning increased costs which would be incurred by the Department in processing an application for a plant variety protection certificate during fiscal year 1988. This information was provided to support the Plant Variety Protection Office's recommendation for a fee increase to fully fund the program. The Board recommended that fees not be raised at this time, stating that (1) the trend in numbers of applications over 7 years indicates a fee increase is not likely to be needed, (2) the public benefits from the actions of the Plant Variety Protection Office, and (3) any funds above expenses go to the U.S. Treasury. The Board also noted that the number of applications had varied both above and below the number required at existing fees to meet present budget requirements.

The increased fees proposed by the Plant Variety Protection Office were based on the receipt of an estimated 189 applications per year. The Board felt that a more realistic estimate would be 200 applications per year, and that the present fees should be sufficient to cover the costs of the program if 200 applications are received.

The Department considered the Board's recommendations. However, it believes that fees must be sufficient to fund the program. Under legislation passed December 22, 1987, all fees collected are deposited in an account designated for funding the program and are not returned to the general Treasury. In only 1 of the past 7 years (1985) has the number of applications been sufficient to fund the program through fees based on current charges per application. There were 219 applicants that year. In the remaining 6 years, the fees were not sufficient to fund the program. Therefore, the Board's recommendation that fees remain at present levels is not accepted. However, in reevaluating the recommended fee increase, the Department agrees that an estimate of 200 applications per year in calculating fees is a more appropriate figure than the 189 applications used in the initial recommendation. Even using that number, it is the Department's opinion that fees must be raised to cover the program costs.

Therefore, in view of the 35 percent increase in costs discussed above, with an adjustment for the improved productivity—and using the 200-certificates-per-year estimate—the Department proposes an increase in the fee charged for processing an application from $2,000 to $2,400. This is necessary to cover the costs incurred by the Plant Variety Protection Office.

While decreasing the cost of processing applications is theoretically an alternative to increasing fees, this is not a realistic option. The Plant Variety Protection Office has achieved major advances in productivity as stated above, and further substantial increases in efficiency are not possible at this time.

Reducing the staff would not be a satisfactory alternative to increasing fees since the output per person would stay the same and the backlog, as well as the time period ineligible varieties are protected under the "protection-applied-for status," would increase. In addition, reducing the staff would not decrease overhead or supervisory costs.

Also not viable as an alternative, would be the reduction of the amount of supervision and review of plant examiners' work by the Commissioner or the elimination of the placement of information on new varieties in the computer file. Either of these actions would increase the probability of issuing certificates on ineligible applications, which would adversely affect the integrity of the program. Moreover, all of the above-mentioned possible alternatives would merely delay the expenditure of necessary funds, thereby increasing the average costs of processing future applications.

Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent in duplicate to the Plant Variety Protection Office and should bear a reference to the date and page number of this issue of the **Federal Register**. Comments submitted pursuant to this document will be made available for public inspection in the Plant Variety Protection Office in Beltsville, Maryland, during regular business hours.

List of Subjects in 7 CFR Part 180

Plant Variety Protection Act, Administrative practices and procedures, Fees, Courts, Labeling, Plants (agricultural).

Accordingly, the Department proposes amending 7 CFR Part 180 as follows:

PART 180—REGULATIONS AND RULES OF PRACTICE UNDER THE PLANT VARIETY PROTECTION ACT

1. The authority citation for Part 180 is revised to read as follows:

Authority: Secs. 6, 22, 23, 26, 31, 42(b), 43, 56, 57, 91(c), 84 Stat. 1542; 7 U.S.C. 2326, 2352, 2353, 2356, 2371, 2402(b), 2403, 2426, 2427, 2501(c); 29 FR 16210, as amended, 37 FR 6327, 6505; 7 U.S.C. 2371.

2. Section 180.175 is revised to read as follows:

§ 180.175 Fees and charges.

The following fees and charges apply to the services and actions specified below:

(a) Filing the application and notifying public of filing	$250
(b) Search or examination	$1,900
(c) Allowance and issuance of certificate and notifying public of issuance	$250
(d) Revive an abandoned application	$250
(e) Reproduction of records, drawings, certificates, exhibits, or printed material (copy per page of material)	$1
(f) Authentication (each page)	$1
(g) Correcting or reissuance of a certificate	$250
(h) Recording assignments (per certificate/application)	$25
(i) Copies of 8 × 10 photographs in color	$25
(j) Additional fee for reconsideration	$250
(k) Additional fee for late payment	$25
(l) Additional fee for late replenishment of seed	$25
(m) Appeal to Secretary (refundable if appeal overturns the Commissioner's decision)	$2,400

(n) Field inspections by a representative of the Plant Variety Protection Office made at the request of the applicant shall be reimbursable in full (including travel, per diem or subsistence, and salary) in accordance with Standardized Government Travel Regulations.

(o) Any other service not covered above will be charged for at rates prescribed by the Commissioner, but in no event shall they exceed $40 per employee-hour.

Done at Washington, DC, July 11, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88-15894 Filed 7-14-88; 8:45 am]

BILLING CODE 3410-02-M

---

7 CFR Part 917

Proposed Expenses and Assessment Rate for Marketing Order Covering Fresh Pears, Plums, and Peaches Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an

assessment rate for the Pear Commodity Committee established under Marketing Order 917 for the 1988–89 fiscal year. The proposal is needed for the Pear Commodity Committee to incur operating expenses during the 1988–89 fiscal year and to collect funds during that year to pay those expenses. This would facilitate program operations. Funds to administer this program are derived from assessments on handlers.

DATE: Comments must be received by July 25, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jerry N. Brown, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone: (202) 475–5464.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 917 (7 CFR Part 917) regulating the handling of fresh pears, plums, and peaches grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulations 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 43 handlers of California pears under this marketing order, and approximately 2,800 pear, plum, and peach producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

Each marketing order administered by the Department of Agriculture requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the Department for approval. The members of the administrative committees are handlers and producers of the regulated commodities. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local areas, and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity (e.g., pounds, tons, boxes, cartons, etc.). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficent income to pay the committee's expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committee before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Pear Commodity Committee met June 21, 1988, and unanimously recommended proposed 1988–89 fiscal year expenditures of $825,793 and an assessment rate of $0.22 per carton (No. 29B special lug box) of assessable pears shipped under M.O. 917. In comparison, 1987–88 fiscal year budgeted expenditures were $910,111 and the assessment rate was $0.20 per carton.

The major expenditure item this year is $675,000 for advertising and promotion compared to $713,800 in 1987–88. The remaining expenses, which are primarily for program administration, are budgeted at about last year's amounts. Total income for 1988–89 would amount to $801,260, including assessment income of $766,260 based on shipments of 3,483,000 cartons of fresh pears, $20,000 from the California Department of Food and Agriculture, and $15,000 from other sources such as interest earned on the reserve fund. The reserve fund of $183,352 would be sufficient to cover the anticipated deficit.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on the producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approvals for the pear program need to be expedited so the committee has sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 917

Marketing agreement and orders, Fresh pears, Plums, Peaches grown in California.

For the reasons set forth in the preamble, it is proposed that § 917.252 be added as follows:

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

Authority: Secs. 1–19. 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New §917.252 is added to read as follows:

§ 917.252 Expenses and assessment rate.

Expenses of $825,793 by the Pear Commodity Committee are authorized, and an assessment rate of $0.22 per No. 29B special lug box of assessable pears is established, for the fiscal year ending February 28, 1989. Unexpended funds may be carried over as a reserve.

Dated: July 12, 1988.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–16000 Filed 7–14–88; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 987

[Docket No. AMS-FV-88-049]

Domestic Dates Produced or Packed in Riverside County, CA; Proposal To Disallow Handlers To Dispose of Utility Dates in Human Consumption Outlets, and Conforming Changes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department invites comments on a proposal to increase the minimum quality of dates for export to Mexico, for use in date products for human consumption, and for donations to needy persons. Under the proposal, dates exported to Mexico would have to meet U.S. Grade C requirements and dates used for products would have to meet modified U.S. Grade C requirements. Currently, utility dates are permitted for export to Mexico and for use in date products. This authority has been in effect since the early 1970's. The industry reports that there are sufficient supplies of better quality dates for use in these outlets. This proposal would return the quality level to that in effect prior to the early 1970's.

DATE: Comments must be received by August 15, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this docket. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085–S, P.O. Box 96456, Washington, DC 20090–6456. Copies of the written material will be made available for public inspection in the office of the Docket Clerk during regular business hours. Written comments should reference the date and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone 202–475–3919.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order 987 (7 CFR Part 987), regulating the handling of domestic dates produced or packed in Riverside County, California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 26 handlers of dates subject to regulation under this marketing order, and there are approximately 135 producers of this commodity in the regulated areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose annual revenues are less than $3,500,000. The majority of handlers and producers of dates produced or packed in California may be classified as small entities.

This proposal would change § 987.112a of Subpart—Administrative Rules (7 CFR 987.101–987.172) to discontinue authority specified therein allowing handlers to ship dates inspected and certified as utility dates to Mexico, and to dispose of such dates for use or use them in certain products for human consumption. Section 987.152(b)(2) of that subpart also is proposed to be changed to disallow donations of such dates to needy persons. These changes would raise the minimum quality requirements for these outlets from utility quality to U.S. Grade C or modifications thereof. The proposed changes in § 987.161 and § 987.164 of the same subpart are conforming changes in recognition of the changes proposed in § 987.112a. This proposal is based upon a unanimous recommendation of the California Date Administrative Committee, which works with the Department in administering the marketing order program.

When the marketing order for dates was amended in 1978, (7 CFR Part 987, 43 FR 4249, February 1, 1978), the term "substandard dates" was changed to "utility dates." However, not all references to substandard dates were changed in the *Code of Federal Regulations*, including § 987.56. For the purposes of this rulemaking, all references in the order to "substandard dates" will be interpreted to mean "utility dates."

Section 987.56 specifies outlets for utility dates and cull dates. Such dates may be disposed of without inspection, but only in feed, non-table syrup, alcohol, or brandy outlets, or in such other outlets for non-human food products as the committee, with the approval of the Secretary, may specify. That section also provides that whenever the committee concludes and the Secretary finds that the use of utility dates of any variety in certain products for human consumption would tend to effectuate the declared policy of the Act, the Secretary shall specify such products, and dates of such variety that are inspected and certified as utility dates may be disposed of for use, or used, in such products. Similar procedures also are specified for the disposition of utility dates through any export outlet.

Utility dates are dates which fail to meet the minimum quality requirements for marketable dates primarily because of an excess of defects such as off-color, deformity, scarring, or broken skin. These defects detract from the dates' appearance but not their edibility. Because of this, such dates are acceptable in some seasons for donations, use in products or export outlets; for example, when supplies of marketable dates are less than market needs.

In the early 1970's, a strong demand existed for dates and date products domestically and in Mexico, but the supply of marketable dates to meet these and other market needs was insufficient. To augment supplies, the committee recommended that lower quality utility dates be permitted to be used for date products for human consumption and for export to Mexico. The California date industry enjoyed relatively strong market conditions throughout the 1970's and early 1980's. However, the demand for dates started to weaken in 1984. The industry currently has an abundant supply of product quality dates, and expects to start the 1988–89 marketing season on October 1 with a more-than-two-year supply.

Accordingly, the committee has recommended that the use of utility dates for certain products in human consumption outlets be ended, effective September 30, 1988, the end of the crop year. This proposed action would return the quality standard to the level for human consumption outlets which existed prior to the relaxation in the early 1970's, and thereby require that better quality dates be made available

for products for human consumption. The committee expects this, together with its ongoing market promotion program instituted two seasons ago, to stimulate buyer interest and improve market conditions. Utility dates usually comprise such a very small part of the date crop that no shortage of dates would result from this proposal.

If the proposed changes were adopted effective October 1, 1988, dates inspected and certified as utility dates prior to that date would be eligible for needy person donations, disposal in product outlets, and for export to Mexico. On or after October 1, 1988, utility dates would have to be disposed of in feed, non-table syrup, alcohol, or brandy outlets, or in such other outlets for non-human food products as the committee, with the approval of the Secretary, may specify. To be eligible as product dates, dates would have to meet at least modified U.S. Grade C requirements, and for export to Mexico at least the requirements of U.S. Grade C. Dates for donations would have to be at least product date quality, but not package date quality.

To implement the committee's recommendation, the first sentence in § 987.112a(d)(3) would specify that dates of any variety identified as "Export-Mexico", and inspected and certified as at least meeting the requirements of U.S. Grade C, may be exported to Mexico. This change would raise the minimum quality for export to Mexico from utility to U.S. Grade C. In addition, paragraph (f) of this section, specifying that utility dates may be disposed of by handlers in the same outlets and subject to the same requirements prescribed in paragraph (e) for product dates, or may be exported to Mexico, would be removed. This change would raise the minimum requirements for product dates from utility quality to U.S. Grade C, and continue the exception that mashing and mechanical injury not affecting eating quality would not be considered in determining the defect factor.

In § 987.152(b)(2), the minimum quality of donated dates would be increased from utility to at least the requirements for product dates. The committee believes this action is necessary to make better quality dates available for human consumption. There are more than ample supplies of product quality dates available for this purpose. For the last two seasons no dates have been donated under this program.

In addition, conforming changes in § 987.161, regarding handler carryover, and § 987.164, regarding reports of shipments, are proposed. References in the sections to utility dates would be removed in conformity with the proposed regulation changes discontinuing the use of such dates in human consumption outlets.

A typical date crop consists of about 38 percent modified U.S. Grade B (for packaged domestic market use), 20 percent export grade (somewhat better than U.S. Grade C), 35 percent product quality (U.S. Grade C), 5 percent utility, and 2 percent culls (which are not marketable for human consumption because they are unwholesome).

Based on available information, the Administrator of AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities. It is the Department's view that discontinuing the use of utility dates for export to Mexico, or disposal as products for human consumption, or for manufacture into such products, would benefit the date industry by improving market conditions and fostering increased date sales with little impact on handler or grower costs. The expected market improvements contemplated by this proposal, and benefits resulting from them would offset any additional costs incurred. The Department has no information to conclude that discontinuing the use of utility dates for donation would adversely affect handler or grower costs.

The information collection requirements contained in the proposed rule have been previously approved by the Office of Management and Budget and assigned OMB No. 0581-0077. The committee's recommendation and all written comments timely received in response to this request for comments will be considered before a final determination is made on this proposal.

List of Subjects in 7 CFR Part 987

Marketing agreements and orders, dates, California.

For the reasons set forth in the preamble, 7 CFR Part 987 is proposed to be amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR Part 987 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. In § 987.112a, the first sentence of paragraph (d)(3) is revised, the title and provisions of paragraph (f) are removed, and paragraphs (g) and (h) are redesignated as paragraphs (f) and (g), respectively, to read as follows:

§ 987.112a Grade, size, and container requirements for each outlet category.

* * * * *

(d) * * *

(3) Dates of any variety identified as "Export-Mexico" and inspected and certified as at least meeting the requirements of U.S. Grade C may be exported only to Mexico. * * *

* * * * *

(f) (Removed)

* * * * *

§ 987.152 [Amended]

3. In the first sentence of § 987.152(b)(2), the words "Utility or" are removed.

§ 987.161 [Amended]

4. In the second sentence § 987.161, the words "and utility dates" are removed from paragraph (c).

5. In § 987.164, the section heading is revised by removing the words "or utility dates", and the first sentence is revised to read as follows:

§ 987.164 Shipments of product dates and disposition of restricted dates in approved product outlets.

Each handler shall file with the Committee a completed CDAC Form No. 8 showing the shipment of each lot of product dates or the No. 8 showing the shipment of each lot of product dates or the disposition of restricted dates in approved product outlets.

* * * * *

Dated: July 12, 1988.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 88-15999 Filed 7-14-88; 8:45 am]

BILLING CODE 3410-22-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-80-AD]

Airworthiness Directives; Boeing Models 707, 727, 737, 747, and 757 Series Airplanes; and McDonnell Douglas Models DC-8, DC-9 (Includes MD-80 Series), and DC-10 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain transport category airplanes certificated for operation with a main

deck Class B cargo compartment, which would require design changes either to modify the cargo compartment to the Class C configuration or to require the use of flame penetration-resistant cargo containers. This action is prompted by the recent loss of a Boeing Model 747 "Combi" airplane that apparently developed a major fire in the main deck cargo compartment.

DATES: Comments must be received no later than November 7, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-80-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

FOR FURTHER INFORMATION CONTACT: Mr. Weston B. Slifer, Systems & Equipment Branch, ANM-130S, FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, telephone (206) 431-1945; or Mr. Kevin Kuniyoshi, Systems & Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808, telephone (210) 514-6323.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-80-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

A Boeing Model 747 "Combi" airplane, operating with a main deck Class B cargo compartment, as defined by Federal Aviation Regulation (FAR) 25.857(b) was lost over the Indian Ocean on November 28, 1987. While the cause of the accident has not been determined, there was evidence of a major fire on board the airplane, which developed from an undetermined origin and progressed within the main deck cargo compartment.

This information prompted an FAA review of existing regulations, policies, and procedures pertaining to the certification of large main deck Class B cargo compartments with volumes exceeding 200 cu. ft. The results of this review are contained in a report titled "Evaluation of Transport Airplane Main Deck Cargo Compartment Fire Protection Certification Procedures," which has been made a part of the Rules Docket for examination by interested persons. The report concludes that, notwithstanding compliance with the existing regulations, airplanes equipped with main deck Class B cargo compartments do not provide an acceptable level of safety in terms of smoke and fire protection.

The FAA is considering the development of new type certifiction and operations regulations to address this issue; however, the existing unsafe condition requires immediate action, applicable to both new production and in-service airplanes. This Notice, therefore, proposes to require a design change for all airplanes listed above that are operated with main deck Class B cargo configurations with volumes exceeding 200 cu. ft. This design change would require either that the Class B cargo compartment be modified to a Class C configuration, meeting the requirements of FAR 25, Appendix F, Part III; or that flame penetration-resistant containers, meeting the requirements of FAR 25, Appendix F, Part III, and having smoke detection and fire extinguishing systems, be used to carry all cargo. The requirements for a Class C cargo compartment are contained in FAR 25.855 and FAR 25.857(c). Class C cargo compartments require a smoke detection system and a built-in fire extinguishing system controllable from the cockpit.

FAA recognizes that other alternative design changes may be developed which may provide a level of safety equivalent to the options stated above. Therefore, the proposal includes provisions for the use of alternate means of compliance, when approved by FAA.

It should be noted that the applicability of this proposal is not limited by airplane serial number. Accordingly, the provisions of the AD, upon becoming effective, would also apply to new designs of the affected models and approved designs that are in production. When such airplanes are inspected for the issuance of an airworthiness certificate, they would be required to comply with the provisions of the AD resulting from this proposal.

Since this condition is likely to exist or develop on other airplanes of these same type designs, an AD is proposed which would require the modification of all main deck Class B cargo compartments to the Class C configuration; or the use of flame penetration-resistant containers with smoke detection and fire extinguishing systems to carry all cargo; or an alternate means of compliance approved by the FAA.

It is estimated that a total of approximately 80 U.S.-registered Boeing Model 707, 727, 737, and 747 series airplanes, and 124 U.S.-registered McDonnell Douglas Model DC-8, DC-9, and DC-10 series airplanes, have been certificated to operate with a Class B main deck cargo compartment. Many of these airplanes have been permanently converted to the all-passenger configuration and are, therefore, not affected by this proposal. Approximately 40 of these model Boeing and McDonnell Douglas series airplanes are presently operating in the mixed cargo/passenger configuration. There are no known U.S.-registered McDonnell Douglas DC-8 or DC-9 series "combi" airplanes in service.

The design alternative selected by an operator will have a significant impact on the cost of complying with this proposed AD. The highest cost option is expected to be the conversion to a Class C compartment, as defined in paragraph A. of this proposal. A conservative cost estimate for such a modifiction, based upon costs of required materials, labor, and testing, between $750,000 and $1,000,000 per airplane. Based on these figures, the total cost of this AD on U.S. operators is estimated to be between $30,000,000 and $40,000,000.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have

federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, large transport airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing and McDonnell Douglas: Applies to Boeing Models 707, 727, 737, 747, and 757 series airplanes; and McDonnell Douglas Model DC–8, DC–9 (includes MD–80 series), and DC–10 series airplanes; equipped with a main deck Class B cargo compartment, as defined by FAR 25.857(b) or its predecessors, with a volume exceeding 200 cu. ft.; certificated in any category. Compliance is required as indicated, unless previously accomplished.

To minimize the hazard associated with a main deck Class B cargo compartment fire, accomplish the following:

A. Within 180 days after the effective date of this AD, or prior to carrying cargo in a main deck Class B cargo compartment, whichever occurs later, accomplish either of the following:

1. Modify all main deck Class B cargo compartments of volume exceeding 200 cu. ft. to comply with the design standards specified in FAR 25.857(c) for a Class C compartment. In addition, the ceiling and sidewall liner panels must meet FAR 25, Appendix F, Part III, effective June 16, 1986. The modification must be approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region (for Boeing airplanes), or the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region (for McDonnell Douglas airplanes).

2. Modify all main deck Class B cargo compartments to require the following placard installed in conspicuous locations approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region (for Boeing airplanes), or the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region (for McDonnell Douglas airplanes), throughout the compartment:

"Cargo carried in this compartment must be loaded in an approved flame penetration-resistant container meeting the requirements of FAR 25.857(c), with ceiling and sidewall liners and floor panels that meet the requirements of FAR 25, Appendix F, Part III, effective June 16, 1986."

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region (Boeing Models); or the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region (McDonnell Douglas Models).

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office, or the Manager, Los Angeles Aircraft Certification Office, as appropriate.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Washington, DC, on July 8, 1988.

M.C. Beard,

Director, Office of Airworthiness.

[FR Doc. 88–15918 Filed 7–14–88; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 88–NM–55–AD]

Airworthiness Directives; McDonnell Douglas Model DC–10–10 and –30 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to all Model DC–10–10 and –30 series airplanes, which would require the inspection and modification of Passenger Service Unit (PSU) and the removal, inspection, and replacement of the PSU oxygen canisters, as necessary. This proposal is prompted by reports that the chemical oxygen generator canisters have been punctured by the existing standoff bracket within the PSU. This condition, if not corrected, could lead to loss of the use of the emergency oxygen system during rapid depressurization of the airplane.

DATES: Comments must be received no later than September 6, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–55–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60). This information may be extended at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Edward S. Chalpin, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514–6323.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103),

Attention: Airworthiness Rules Docket No. 88–NM–55–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The airplane manufacturer and eight airline operators reported that, during routine maintenance inspections of the PSU oxygen system, several chemical oxygen canisters were found to be worn or punctured in the vicinity of the standoff brackets within the PSU unit containers. The oxygen generator brackets may settle in service, and this downward deflection can result in contact between the oxygen generator and the food tray latch cotter pin. The canister bracket may vibrate and abrade the thin wall of the canister, causing a scuff mark or small puncture. This condition, if not corrected, could lead to loss of the use of the emergency oxygen system during rapid depressurization of the airplane.

The FAA has reviewed and approved Jepson-Burns Service Bulletin Number 25–20–618, dated June 10, 1987, which describes procedures for visual inspection of Scott Aviation chemical oxygen generators and the addition of new standoff brackets within the PSU units on Jepson-Burns seat Model FBC–2000UHDE–( ) installed in McDonnell Douglas Model DC–10–10 and –30 series airplanes.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection of the 3-man oxygen generators (Scott Aviation part number 801386–06) within the PSU, and replacement, if necessary, of any generator showing evidence of bracket contact and wear on the canister; and replacement of the existing brackets with new bracket assemblies (Jepson-Burns part number 42703001); in accordance with the service bulletin previously mentioned.

It is estimated that 105 airplanes of U.S. registry would be affected by this AD. There are approximately 88 PSU on each airplane. It would take approximately .5 manhour per PSU to accomplish the required actions, and the average labor cost would be $40 per manhour. The cost of modification parts is estimated to be $192 per PSU. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $18,656 per airplane, or $1,958,880 for the U.S. fleet.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model DC–10–10 and –30 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–10–10 and –30 series airplanes equipped with Jepson-Burns Corporation seat Model FBC–2000UHDE–( ), certificated in any category. Compliance required as indicated, unless previously accomplished.

To assure proper operation of the passenger emergency oxygen system, accomplish the following:

A. Within 90 days after the effective date of this AD, remove and inspect all 3-man oxygen generators, Scott Aviation Part Number 801386–06, within the Passenger Service Unit (PSU) of the seat. Replace, prior to further flight, any generator showing evidence of food tray latch and cotter pin contact and wear on the canister.

B. Within 90 days after the effective date of this AD, remove existing brackets and install new bracket assemblies, Jepson-Burns Part Number 42703001, in accordance with the Implementation Instructions of Jepson-Burns Service Bulletin Number 25–20–618, dated June 10, 1987.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Los Angeles Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Washington, DC, on July 8, 1988.

M.C. Beard,

Director, Office of Airworthiness.

[FR Doc. 88–15919 Filed 7–14–88; 8:45 am]

BILLING CODE 4910–13–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1625

Early Retirement Plans

AGENCY: Equal Employment Opportunity Commission (EEOC, Commission).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission hereby publishes an advance notice of proposed rulemaking (ANPRM) under section 9 of the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. 621 *et seq.*, relating to the prohibition against discrimination on the basis of age in early retirement plans, to develop guidance for the public.

DATES: Comments should be submitted on or before October 13, 1988.

ADDRESS: Comments should be submitted, in quadruplicate if possible, to: Executive Secretariat, EEOC, 2401 E Street, NW., Washington, DC 20507. The Commission may schedule a public hearing on the issue after the expiration of the comment period.

FOR FURTHER INFORMATION CONTACT: Paul E. Boymel, Office of Legal Counsel, Room 214, EEOC, 2401 E Street, NW., Washington, DC 20507, (202) 634–6423.

Background

The ADEA prohibits discrimination on the basis of age with respect to an employee's compensation, terms, conditions, or privileges of employment. In light of recent amendments to the ADEA and several cases dealing with early retirement, questions have arisen regarding the legality of early retirement plans in general and of specific plans. Since the use of early retirement has expanded greatly in recent years, the Commission deems it appropriate to consider the issuance of regulatory guidance in the area.

Since a project of this magnitude should not be undertaken without sufficient study, the Commission is publishing this ANPRM to seek public comment in several specific areas, to enable the Commission to channel its regulatory efforts effectively.

Questions for Public Comment

The Commission requests public comment on the following specific issues (the Commission would also welcome comment on any other issues relating to early retirement plans under the ADEA):

I. Background Information and Statistical Data

a. What types of early retirement plans are currently being offered by employers? What types of benefits are offered in such plans? Under what circumstances are such plans being offered?

b. For what purposes have such plans been offered? Have the plans actually achieved such purposes?

c. How many employers offer such plans? How are the plans communicated to the employees?

d. How many employees, and in which age groups, accept such plans?

e. What restrictions are provided in such plans on the availability of early retirement, the amount of benefits, or other terms of the plans?

f. How frequently do such plans result from the collective bargaining process?

g. What alternatives to early retirement programs could be implemented to achieve the same results? How effective have such alternatives been in the past?

II. Legal Issues

a. What types of early retirement plans are currently legal under the ADEA?

b. What types of early retirement plans should be permitted under the ADEA?

c. Should early retirement be available to all employees? To all employees age 40 or over? To all employees over an age specified in the plan?

d. Is it permissible to reduce or eliminate an early retirement benefit in correlation with increasing age or other factors? If so, under what circumstances?

e. Should the employer be allowed to target the early retirement plan for cost savings or other business purposes? If so, under what circumstances?

f. Are "window period" early retirement plans, those in which the plan is a temporary provision designed to promote a reduction in force, permissible under the ADEA? If so, under what circumstances?

g. What is the effect of section 4(i) of the ADEA on early retirement plans?

h. Early retirement decisions by employees must be voluntary. How should this requirement be implemented? What standards or factors would be appropriate in judging whether a plan was truly voluntary?

Signed on behalf of the Commission this 11th day of July, 1988, at Washington, DC.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 88–16008 Filed 7–14–88; 8:45 am]

BILLING CODE 6570–06–M

---

29 CFR Part 1625

Employee Benefit Plans

AGENCY: Equal Employment Opportunity Commission (EEOC, Commission).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission hereby publishes an advance notice of proposed rulemaking (ANPRM) under section 9 of the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. 621 *et seq.*, relating to the prohibition against discrimination on the basis of age in employee benefit plans and the exception contained in section 4(f)(2) of the ADEA, 29 U.S.C. 623(f)(2), to develop guidance for the public.

DATES: Comments should be submitted on or before October 13, 1988.

ADDRESS: Comments should be submitted, in quadruplicate if possible, to: Executive Secretariat, EEOC, 2401 E Street, NW., Washington, DC 20507.

FOR FURTHER INFORMATION CONTACT: Paul E. Boymel, Office of Legal Counsel, Room 214, EEOC, 2401 E Street, NW., Washington, DC 20507, (202) 634–6423.

Background

In light of the fact that the ADEA has been amended several times since the Department of Labor published regulations in 1979 and that numerous cases have been decided by the federal courts under the ADEA, it is appropriate to review the current regulations.

Congress, in section 4(a)(1) of the ADEA, described the employer conduct that is prohibited (unlawful discrimination by employment agencies and labor organizations is covered by sections 4(b) and 4(c) of the ADEA, respectively):

(a) It shall be unlawful for an employer—

(1) To fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

However, Congress fashioned an exception to the general prohibitions in section 4(a)(1) of the ADEA. That exception in section 4(f)(2) provides:

It shall not be unlawful for an employer, employment agency, or labor organization—

(2) To observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this Act, except that no such employee benefit plan shall excuse the failure to hire any individual, and no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 12(a) of this Act because of the age of such individual.

On June 21, 1969, the Department of Labor (DOL), which at that time had jurisdiction over the ADEA, published in the **Federal Register** (34 FR 9709) an Interpretative Bulletin on employee benefit plans under section 4(f)(2) of the ADEA (the 1969 I.B.), 29 CFR 860.120. The purpose of the 1969 I.B. was to provide guidance as to what conduct by employers would be permissible under section 4(f)(2). DOL's 1969 rules stated the general principle that:

[A]n employer is not required to provide older workers who are otherwise protected by the law with the same pension, retirement or insurance benefits as he provides to younger workers, so long as any differential between them is in accordance with the terms of a bona fide benefit plan. For

example, an employer may provide lesser amounts of insurance coverage under a group insurance plan to older workers than he does to younger workers, where the plan is not a subterfuge to evade the purposes of the Act. A retirement, pension, or insurance plan will be considered in compliance with the statute where the actual amount of payment made, or cost incurred, in behalf of an older worker is equal to that made or incurred in behalf of a younger worker, even though the older worker may thereby receive a lesser amount of pension or retirement benefits, or insurance coverage * * *.

The ADEA was amended in 1978 to preclude mandatory retirement of covered employees and to raise the upper age limit for coverage under the ADEA from 65 to 70. In amending section 4(f)(2), Congress made clear that DOL should issue more comprehensive guidance on that section. On May 25, 1979, DOL published the "Employee Benefit Plans: Amendment to Interpretative Bulletin" 29 CFR 860.120, 44 FR 30648 (the 1979 I.B.), which provided guidance on employee benefit plans covered under the ADEA and provided special rules for pension plans. The 1979 I.B. states the general principle that:

> The legislative history of [section 4(f)(2)] indicates that its purpose is to permit age-based reductions in employee benefit plans where such reductions are justified by significant cost considerations. * * * Where employee benefit plans do meet the criteria in section 4(f)(2), benefit levels for older workers may be reduced to the extent necessary to achieve approximate equivalency in cost for older and younger workers. A benefit plan will be considered in compliance with the statute where the actual amount of payment made, or cost incurred, in behalf of an older worker is equal to that made or incurred in behalf of a younger worker, even though the older worker may thereby receive a lesser amount of benefits or insurance coverage.

When the EEOC took over enforcement of the ADEA on July 1, 1979, EEOC continued the DOL regulations under section 860.120 in force. On July 1, 1987, the regulations were redesignated as 29 CFR 1625.10. With a few exceptions, e.g., the rescission of § 860.120(f)(1)(iv)(B) on March 18, 1987, the rules in the 1979 I.B. have remained unchanged since 1979. The ADEA was amended in 1982 by the addition of section 4(g), relating to health insurance (section 4(g) was then amended in 1984 and 1986), in 1986 by the addition of section 4(i), relating to pension benefits, and also in 1986 with the removal of the age 70 cap for most employees.

In light of the amendments to the ADEA and the developing case law in the area of employee benefit plans, the Commission has decided to review the 1979 I.B. Since a project of this magnitude should only be done after sufficient study and public comment, the Commission is publishing this ANPRM to maximize public participation in several specific areas, to enable the Commission to channel its regulatory efforts effectively. It should be noted that the ANPRM does not request comments regarding either pension benefits or early retirement programs, both of which will be addressed in separate proceedings.

Questions for Public Comment

The Commission requests public comment on the following specific issues (the Commission would also welcome comment on any other issues dealing with employee benefit plans under the ADEA):

1. In General

a. Which plans should be considered to be "employee benefit plans" under the ADEA?

b. What factor should be assessed when determining the presence or absence of "subterfuge" under section 4(f)(2)? Should employee benefit plans which predate the ADEA be considered as meeting the lack of subterfuge requirement? If so, under what circumstances?

c. Is the present "benefit package" approach adequate to meet problems arising from the impact of age on employment?

d. Should the Commission provide "safe harbors" (specific numerical examples of permissible plans) with respect to each type of employee benefit plan?

e. How should "cost" be defined with regard to employee benefit plans, particularly with regard to group insurance plans?

f. Is the "integration" of government-provided benefits (such as Social Security) still viable, and, if so, what specific issues should be addressed?

2. Life insurance plans

a. Does the five-year bracketing permitted in the 1979 I.B. accurately reflect insurance industry practice? Would other brackets be more realistic or preferable?

b. Does adequate data exist that would allow the Commission to develop satisfactory safe harbors relating to the specific percentages of decrease in benefits per age (e.g., a safe harbor could provide that a life insurance plan providing 100 units of coverage for persons in the 55–60 age bracket need only provide 90 units of coverage for persons in the 60–65 age bracket)?

c. What is the employer's obligation to older workers (e.g., those over 80) if life insurance is not commercially available?

3. Long-term disability

a. In light of the lifting of the age 70 cap, are the safe harbors in the 1979 I.B. still valid?

b. Is there adequate data to develop more precise safe harbors?

c. What is the employer's obligation to older workers (e.g., those over 80) if long-term disability insurance is not commercially available?

d. Must long-term disability benefits and retirement benefits be paid at the same time?

4. Health insurance

a. In light of the passage of section 4(g), should health insurance plans be permitted to reduce the benefits of (or increase the costs for) employees under the age of 65?

5. Severance pay and sick pay plans

a. Should severance pay and/or sick pay plans be considered "employee benefit plans" under section 4(f)(2)? If so, under what circumstances?

b. How could such plans show lack of subterfuge?

c. Under what circumstances, if any, could such plans be included in a benefit package with other section 4(f)(2) benefits?

Signed on behalf of the Commission this 11th day of July, 1988, at Washington, DC.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 88–16009 Filed 7–14–88; 8:45 am]

BILLING CODE 6570–06–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1918

[Docket No. C–02]

General Safety and Health Programs; Request for Comments and Information

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Request for Comments and Information.

SUMMARY: The Occupational Safety and Health Administration (OSHA) seeks

information which could lead to the development and promulgation of an occupational safety and health guideline or other means of encouraging and assisting employers in general industry, shipyard employment and longshoring to use management methods to provide workplaces free of recognized hazards. The purpose of this Request for Comments and Information is to stimulate public participation and comment by suggesting rationale and language to provide adequate guidance.

DATES: All comments on this notice should be received by August 29, 1988.

ADDRESS: All comments should be submitted in quadruplicate to the Docket Officer, Docket No. C–02, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3670, 200 Constitution Ave., NW., Washington, DC 20210. Telephone: (202) 523–7894. Comments will be available for public inspection and copying at the above location.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3637, Washington, DC 20210. Telephone: (202) 523–8151.

SUPPLEMENTARY INFORMATION:

I. Background

Although sec. 5(a)(1) of the Act assigns a general duty to each employer to furnish each employee "employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees," OSHA's major focus has been on setting standards for specific hazards and enforcing compliance with them. In recent years, however, OSHA has become increasingly convinced of the relationship between superior management of safety and health programs—which address all safety and health hazards, whether or not covered by OSHA standards—and low incidence and severity of employee injuries. The application of management techniques in these programs also appears to be essential to the elimination or adequate control of employee exposure to toxic substances and other unhealthful conditions.

As a result of this awareness, OSHA has increased emphasis on management practices in several of the Agency's programs. Some of the Agency's standards contain requirements for management practices, such as the standards on Hazard Communication (29 CFR 1910.1200) and Hazardous Waste Operations (29 CFR 1910.120). In addition, subpart C of the construction standards, 29 CFR 1926, specifically requires management programs for accident prevention and employee training and education in the recognition, avoidance and prevention of unsafe conditions. In 1987, these construction standards were clarified with the issuance of OSHA Instruction STD 3–1.1. OSHA has also instituted programs to encourage voluntary improvement of safety and health management and prepared informational pamphlets describing the elements of health management. In spite of this variety of activities, most employers are not fully aware of OSHA's emphasis on the value and importance of effective management in worker safety and health protection.

The purpose of this Request for Comments and Information is to stimulate public participation and comment by suggesting rationale and language to provide adequate guidance. OSHA invites ideas, data and opinions about the need, practicability and prospective effectiveness of such guidance in general industry, shipyard employment and longshoring in reducing workplace injuries and illnesses.

Over the years, OSHA field staff have seen many examples of exemplary workplaces where safety and health programs were well-managed and where injury rates were exceptionally low. The common characteristic observed at these sites was the use of organized and systematic methods to assign appropriate responsibility to all managers, supervisors and employees, to inspect regularly for and control existing or potential hazards, and to orient and train all employees in the ways and means to eliminate or avoid those hazards.

The fundamental importance of such methods has been reflected in decisions of the Occupational Safety and Health Review Commission and the U.S. Courts of Appeals, especially in cases involving an employer claim that a violative workplace condition or action resulted from unpreventable employee misconduct. Such misconduct has been recognized as a defense against citation only when an employer had a work rule prohibiting the conduct, had provided training to ensure that the rule was understood, and had supplied adequate supervision (including regular inspections and work rule enforcement) to ensure that the work rule was followed. These criteria have applied in cases involving the citation of OSHA standards as well as the general duty clause. The implication of these cases is that the employer has the duty to establish and maintain such management practices, to the extent that they are necessary to ensure that safe and healthful working conditions are maintained and that safe and healthful work practices are followed.

OSHA inspection checklists provide information as to whether worksites have a safety and health program, and some regions (OSHA's Region III in particular) have established protocols for making determinations as to the quality of the programs. In some cases, these findings have been a factor in "general duty" citations; in others they have prompted recommendations for safety and health program improvements which employers have agreed to as part of citation settlement agreements. In addition, a chemical industry special emphasis enforcement program, which included the review of management systems needed to lower the risk of catastrophic releases of toxic chemicals, resulted in an unusually high number of general-duty citations being issued for system problems not covered by standards.

To encourage employers and employees to adopt and improve existing safety and health programs, OSHA announced a plan to approve worksites with exemplary programs for participation in the Voluntary Protection Programs (VPP) beginning July 2, 1982 (47 FR 29025). The participation requirements embodied in the VPP are a distillation of the means, methods and processes already in use at worksites where safety and health conditions are exceptionally good.

Because VPP participating worksites are officially recognized and are excluded from routine programmed OSHA inspections, the quality of the safety and health programs at these sites must be maintained as models of effectiveness. Currently, 60 sites are participating in VPP, and several have been in the program for five or more years. Collectively, during their participation in the VPP, these sites have experienced lost-time injuries that are approximately one-fourth of the average for their industrial classifications. In addition, employers at these sites have reported improved morale and productivity benefits, as well as significantly reduced workers' compensation and other costs.

For injuries alone, costs can be considerable. According to Frank E. Bird, Jr.'s *Management Guide to Loss Control* (Ex. 2–1), for every $1 in medical or insurance compensation costs for a worker injury, $5–50 more are likely to be spent to repair building, tool or equipment damage; to replace damaged products or materials; or to make up for losses from production delays and

interruptions. An additional $1–3 will be spent for hiring and training replacements and for time to investigate the incident.

Mr. Bird goes on to point out that if a company's profit margin is five per cent, it will have to sell $20,000 worth of its product to pay for $1,000 of injury costs. If the profit margin is one per cent, sales would have to reach $100,000. The incentive to reduce injuries as much as possible is very clear. The fact that VPP participants have injury rates which are one-quarter of their industry averages not only demonstrates that significant reduction is possible; it also strongly indicates that the guidance proposed by OSHA is a major means to achieve the reduction.

By using a formula developed by David R. Bell and published in his article "Gauging Safety Outlays and Objectives" in *Occupational Hazards*, June, 1987, (Ex. 2–2), the number of lost workday cases avoided can be calculated for each worksite with a lost workday case rate (LWCR) below the national average for the industry to which it belongs. This formula is as follows:

$$\frac{\text{Industry LWCR} \times \text{Employment at the site}}{100} = \text{Expected LWCases} - \text{Actual LWCases} = \text{Number of injuries avoided}$$

The use of this formula provides OSHA with the information that VPP participants in 1986 avoided 75 per cent of the lost-workday injuries that could have been expected by average industry performance for the same industrial classifications and employment sizes. That means that 1,478 lost-workday cases were avoided as a result of effective safety and health management. Management at each site within the VPP can objectively project the number of injuries that they could expect if their site were average for the next year, and then compare their projection to their actual experience as a means of evaluating their performance. This formula can also be used to demonstrate the value of investing in and of upgrading the site safety and health program, based on the site's determination of the average cost of a lost workday injury.

Although OSHA recognizes that the VPP worksites are exceptional in providing safe and healthful working conditions, their successes have highlighted the importance of effective safety and health management in reducing occupational injuries and illnesses and have demonstrated that such protection can be achieved by other employers with the commitment to provide a safe and healthful workplace.

In addition, both employer and employee representatives have encouraged OSHA to consider alternative regulatory approaches for safety and health programs. In comments before the National Advisory Committee on Occupational Safety and Health (NACOSH), Ms. Margaret Seminario, AFL–CIO, stated that "* * * one of the problems with OSHA has always been * * * that OSHA has focused on particular hazards rather than health and safety programs in the workplaces." (See Ex. 2–3.) Joe A. Adam, United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry, while addressing the OSHA Advisory Committee on Construction Safety and Health (ACCSH), stated that "* * * employers, in some cases, completely disregard * * * [their] responsibility to train, instruct and set up a program, leading to a very unsafe situation on some jobs." (See Ex. 2–4.) At the April 30, 1986 meeting, ACCSH approved a motion commending OSHA for developing program guidelines for Secs. 1926.20 and 21 which require construction industry employers to maintain safety and health programs for frequent and regular inspections, and for education and training of construction personnel (Ex. 2–5.).

In 1981, Robert A. Hanson, Chairman of the Board for Deere and Company, said that:

> Deere has been committed to strong occupational health and safety programs for many years preceding the passage of the Occupational Safety and Health Act * * * By supplementing our OSHA compliance efforts with our own objective-oriented accident analysis and prevention program, since 1974 our total injury and illness incidence rate has been reduced by 82 percent. (See Ex. 2–6.)

In light of the absence of comprehensive, positive guidance from OSHA on the management methods needed to lower injury rates and of the evidence from the VPP and other sources that systematic management policies, procedures and practices can have a major impact on the incidence of injuries and illnesses, OSHA is inclined to believe that a guideline is both reasonable and advisable. OSHA is requesting comment on this issue, as well as advice as to the language of the guidance. In addition, OSHA would appreciate comments on what methods should be used to maximize employer understanding of the guideline and of the benefits of following it. Finally, OSHA is requesting comments on possible incentives which may increase employer attention to the benefits of effective safety and health management.

Following is suggested language, segmented for the purpose of analysis, that such a guideline might contain. Each part is followed by discussion of the reasoning behind the language outlined. The suggested language has evolved out of general industry and construction experience. Employers in shipbuilding and longshoring may want to suggest other language to address the employee protection issues of their industry. On the other hand, this language relates to essential functions in all organizations and may be adequate as general guidance for general industry, shipbuilding and longshoring. The suggested guideline in its entirety has been repeated at the end of the notice for easy reference.

II. Possible Language for Safety and Health Program Guidelines—Provided for Discussion Purposes

(a) *General.* Employers are advised to institute and maintain in their establishments a program which provides policies, procedures and practices that are adequate to recognize and protect their employees from occupational safety and health hazards. An effective program will include provisions for the identification, evaluation and control or prevention of general workplace hazards, specific job hazards and potential hazards arising from foreseeable conditions. The degree of formality and complexity of an effective program will vary with the size of the establishment and the complexity of the worksite hazards. Especially in smaller sites, the extent to which the program is described in writing is less important than how effective it is in practice.

Paragraph (a)—General. This paragraph would describe the overall objectives of effective safety and health management, and indicate the principal motives for meeting them. Although compliance with the law, including the general duty clause and OSHA standards, is an important objective of an effective program and a motive for an employer to implement such a program, OSHA has found that the most successful programs look beyond the legal requirements to address all hazards. Their purpose is to prevent injuries and illnesses and the attendant human and economic costs, whether or not compliance with the law is at issue. This approach is essential in view of the difficulty that regulatory agencies have in moving quickly to set standards for every possible hazard in the workplace and to revise them when new information becomes available.

An effective program will anticipate and guard against the possibility of injury or illness, not only in relation to existing hazards which are common to the general workplace or unique to specific jobs, but also in relation to conditions or practices which might change in a way which creates a hazard. To avoid falling victim to a hazard, it is essential to stay ahead of it.

The statement concerning formality and complexity is intended to stress OSHA's recognition that relatively simple, unwritten policies, practices and procedures are adequate to address the hazards in many smaller and less hazardous establishments. The more complex and hazardous an operation is, the more formal and complex the program will probably need to be.

(b) *Specific Elements.* An effective occupational safety and health program will include each of the following actions in an appropriate form:

Paragraph (b)—Specific Elements. The intent of this section is to set forth the areas of managerial practice which are essential to effective safety and health protection. These practices, means and methods are consistent with those used by employers to achieve other organizational objectives, such as cost control, quality and productivity. Giving safety and health equal organizational priority with these other objectives is fundamental to the protection of individual employees *and* to the effectiveness of the organization itself.

These elements consist of methods historically used to accomplish management objectives for safety and health. They are generic in that they are generally applicable regardless of unique operations or conditions of particular firms. Though at points they are expressed in the terms of the "hierarchical" organizations most common in American industry (i.e., by reference to "managers," "supervisors," "employees"), they can easily be adapted to other organizational forms or styles of operation. They relate to essential concerns and activities of any organization. It is on this basis that OSHA proposes consideration of their application in shipyard employment and longshoring as well as general industry.

Four principal elements of effective safety and health management are listed. They are: Management commitment, worksite analysis, hazard prevention and control, and safety and health training.

Management commitment provides the central means for organizing and controlling activities within organizations. These central means include establishing goals and objectives; assigning responsibility to perform specific actions and to accomplish prescribed objectives; providing adequate authority and resources to meet the responsibility; and, using systems of accountability to ensure that the responsibility is met. Equally important is the comprehensive periodic review of operations to see if they are meeting the objectives and whether the objectives are adequate to meet the goals. This section recommends that these means be used in safety and health protection with at least as much vigro as for other organizational purposes.

Worksite analysis involves and active examination of the workplace to identify not only existing hazards but also conditions and operations in which changes might occur to create hazards. Passive unawareness of a hazard is both an insufficient reason for failure to recognize a hazard under the general duty clause of the Act and a sure sign that safety and health policies and/or practices are ineffective.

In Congressional deliberations on the general duty clause of the Act, a proposal to use the term "readily apparent" hazards, rather than "recognized" hazards, was debated. In describing the language that congress finally adopted, Congressman Daniels (NJ) stated:

> A recognized hazard is a condition that is known to be hazardous, and is known not necessarily by each and every individual employer but is known taking into account the standard of knowledge in the industry. In other words, it does not depend on whether the particular employer is aware of it.
>
> I am afraid that "readily apparent" as used in the substitute, means apparent without investigation, even though a prudent employer would investigate under the circumstances. A danger, in other words, may be recognized as such in the industry, but may not be apparent to an employer who is ill-informed and does not choose to investigate the danger of the situation. That is not sufficient protection for employees. (See Legislative History of the Occupational Safety and Health Act of 1970 (S. 2193, Pub. L. 91-5596) p. 1007.)

Identifying at a worksite those hazards which are recognized in a particular industry is a critical foundation for safety and health protection. An effective program will not stop at this point, however. It will continually review working conditions and operations to identify hazards which have not previously been recognized in the industry, and conditions and operations which may change in a way which creates a hazard.

Hazard prevention and control are triggered by the determination that a hazard or potential hazard exists. Where possible, hazards should be eliminated. Where potential hazards cannot be completely prevented, they must be controlled to prevent actual exposure. When exposure does occur, it must be corrected in a timely manner.

Safety and health training need not be elaborate, formal or always solely related to safety and health. Safety and health information and instruction is often most effective when incorporated into other training about performance requirements and job practices, such as management training on performance evaluation, supervisors' training on the reinforcement of good work practices and the correction of poor ones, and employee training on the operation of a particular machine.

(1) *Management Commitment.*

(i) Establish a clear goal for the safety and health program and objectives for meeting it; communicate them to all employees; and ensure that employees can see top management involvement.

(b)(1)(i) The establishment of clear goals and objectives is integral to the accomplishment of any desired result. Communicating these goals and objectives ensures that all members of the organization understand the direction that the organization must take. In order to ensure the credibility of management commitment, it is particularly inportant that employees be able to see actual demonstrations of management involvement in safety and health concerns. For example, a plant manager who performs periodic "housekeeping" inspections demonstrates such involvement.

(ii) Provide for employee involvement in the structure and operation of the program and in decisions which affect their safety and health.

(b)(1)(ii) Employee participation does *not* mean transfer of responsibility. The Act clearly places responsibility for safety and health protection on the employer in Sec. 5. Participation does mean the utilization of the special knowledge and interest that employees have to develop and maintain programs to protect themselves and their fellow employees. OSHA has been many functions through which employees have been effectively included in safety and health programs at the worksites in the VPP. Among these are: Inspecting for hazards and recommending corrections or controls for hazards found; analyzing jobs to locate potential hazards and develop safe work procedures; developing or revising safe work rules; training new hires in safe work procedures and rules and/or their peers in newly revised safe work procedures; providing programs and presentations for safety meetings; and, assisting in accident investigation. Such functions have been carried out in a number of organizational contexts—most commonly in joint labor-management committees but also through such means as labor safety committees, rotational assignment of employees to such functions, and acceptance of employee volunteers for the functions. Inclusion of employees in one or more of these approaches, or in any way that fits the individual worksite and provides an employee role that has impact on decisions about safety and health protection, will strengthen the employer's overall program of safety and health protection.

(iii) Assign and communicate responsibility for all aspects of the program, so that managers, supervisors and employees at all organizational levels know what performance is expected of them.

(b)(1)(iii) An effective program will include all members of the organization in these procedures—managers, supervisors and others—both in planning and in operations. Two-way communication between management and employees, both about organizational goals and objectives and about expectations of individuals, is critical. If all persons do not understand what is expected of them, and why, they are unlikely to perform as desired.

(iv) Provide adequate authority and resources to meet the assigned responsibilities.

(b)(1)(iv) If those who are assigned responsibility for ensuring effective safety and health program performance are not also given adequate authority and the resources—in terms of adequate personnel, budget and capital expenditure funds—to fulfill the responsibility, it is unlikely that they will meet management expectations.

(v) Hold managers, supervisors and employees accountable for meeting their responsibilities.

(b)(1)(v) After assigning responsibility and providing the necessary authority and resources to accomplish safety and health program goals and objectives, it is essential to hold accountable those who are responsible for achieving them. Systems of accountability need to include recognition for competent performance and correction of inadequate performance. When a refusal to follow safe and healthful practices is at issue, consistently applied disciplinary procedures for enforcing those practices are essential.

(vi) Review program operations at least annually to evaluate their success in meeting the goal and objectives, and revise the program and/or the objectives when they do not meet the goal of effective safety and health protection.

(b)(1)(vi) A comprehensive program audit is essential periodically to evaluate the whole set of safety and health management means, methods and processes, to ensure that they are adequate to protect against the potential hazards at the specific worksite. The audit determines whether policies and procedures are implemented as planned and whether in practice they have met the objectives set for the program. It also determines whether the objectives, when met, are adequate to meet the program goal of effective safety and health protection. When either performance or the objectives themselves are found to be inadequate, revisions are made. Without such a comprehensive review, program flaws and their interrelationship may not be caught and corrected.

(2) *Worksite Analysis.*

(i) So that all hazards and potential hazards are identified, provide for competent persons: (1) To conduct comprehensive worksite surveys periodically, (2) to analyze new processes, materials and equipment, and (3) to perform routine job or phase hazard analyses.

(b)(2)(i) Periodic comprehensive surveys of the worksite provide an opportunity to step back from the routine checks for previously recognized hazards and look for others. Job hazard analysis in stable work situations common in general industry, and phase hazard analysis in changing work processes such as those in construction, provide another important tool for identifying hazards not previously recognized. Analysis of new processes, materials and equipment before their use as well as when they are first introduced provides a check against the introduction of new hazards with them.

The frequency with which comprehensive examinations would be needed is understood to depend on the complexity, hazardousness, and changeability of the worksite. Many successful worksites conduct this review on an annual or biannual basis.

Implicit in the provision for all worksite surveys, reviews and analyses is the need for employers to seek competent advice and assistance when they lack needed expertise and to use appropriate means methods to identify and assess all existing and foreseeable hazards. Personnel who perform baseline and periodic comprehensive surveys and analysis of new processes, procedures and equipment may require greater expertise than those who conduct routine inspections, since the former are conducting a broader and deeper review.

(ii) Provide for regular site inspections by competent persons and encourage employee reports of hazards, to identify new or previously missed hazards and failures in hazard controls.

(b)(2)(ii) Once a comprehensive examination of the workplace has been conducted and hazard controls have been established, routine site inspections are necessary to ensure that changes in conditions and activities do not create new hazards and that hazard controls remain in place and continue to be effective. These inspections also look out for new or previously unrecognized hazards, but not to the same degree as baseline or other comprehensive surveys. Numerous specific OSHA standards require inspection of particular equipment, conditions and activities as a safety precaution prior to operation or use. This guideline would make clear that, in effective safety and health programs, this generally recognized inspection practice is applied more broadly to all conditions and activities.

Personnel performing regular inspections should possess a degree of experience and competence adequate to search for hazards described by the comprehensive survey. They may not have the degree of competence in analyzing worksite conditions and operations to identify potential hazards that is required of those who perform baseline and comprehensive surveys. They are able to recognize hazards in the areas they review and to identify reasonable means for their correction or control. Such competence should normally be expected of ordinary employees who are capable of safely

supervising or performing the operations of the specific workplace. Smaller businesses which need assistance in the develoment of such competence can receive free assistance from OSHA and from a nationwide network of OSHA-funded, State-operated consultation projects.

(iii) Provide for investigation of accidents and "near miss" incidents by competent persons, to identify their causes and means for their prevention.

(b)(2)(iii) Accidents and incidents in which employees narrowly escape injury clearly expose hazards. Analysis to identify their causes permits development of measures to prevent future injury or illness. A review of injury experience over a period of time may reveal patterns of injury with common roots which can be addressed.

(3) *Hazard Prevention and Control.*

(i) Establish procedures for ensuring the timely prevention and control of hazards, however detected, through engineering techniques where feasible, through personal protective equipment, and through safe work procedures which are understood by all affected employees and enforced by a clearly communicated disciplinary system.

(b)(3)(i) Once hazards and potential hazards are detected by any of the means listed above, they must be systematically prevented or controlled. Where feasible and appropriate, they should be engineered out of the workplace. If that is not appropriate, the degree of exposure should be controlled by personal protective equipment and carefully developed safe work procedures. Those procedures must first be understood and then enforced so that employees are not tempted to take short cuts and thereby endanger themselves.

(ii) Provide for equipment maintenance, to prevent hazardous breakdown.

(b)(3)(ii) Equipment maintenance is of particular importance in preventing the development of hazards which go unidentified. A regular schedule of servicing, replacing or repairing equipment at intervals frequent enough to avoid foreseeable equipment breakdowns is an integral part of hazard control.

(iii) Provide for prompt and appropriate correction of hazards to which, due to breakdowns of hazard prevention and control systems, employees are exposed.

(b)(3)(iii) Factors which may affect the time required for correction of hazards include: (1) The complexity of abatement technology; (2) the degree of risk; and (3) the availability of necessary equipment, materials and staff qualified to complete the correction. Because conditions affecting hazard prevention and control vary widely, it is impractical for OSHA to propose specific time limits for all situations. An effective program will correct hazards in the shortest feasible time permitted by the nature of technology required and the availability of needed personnel and materials. It will also provide for interim protection when immediate correction is not possible.

(iv) Plan and prepare for emergencies, with training and drills as needed.

(v) Establish a medical program which includes easy accessibility of first aid, physician services and emergency medical care nearby.

(b)(3) (iv) and (v) Planning and training for emergencies and the availability of first aid and emergency medical care are essential in minimizing the harmful consequences of accidents and injuries. Training and drills allow for appropriate action to become "second nature" to employees who may be called upon to react to the highly stressful conditions of a fire or other life-threatening emergency. The degree of preparation and drill needed will depend upon the nature of possible emergencies and the complexity of evacuation of the worksite.

(4) *Safety and Health Training.*

(i) Ensure that all employees understand the hazards to which they may be exposed and how to prevent harm to themselves and others from exposure to these hazards.

(b)(4)(i) The duty to inform employees about workplace hazards and to provide training that will enable them to avoid work-related injuries or illnesses is specified for chemical hazards in OSHA's standard on Hazard Communication and is addressed elsewhere in other specific standards such as Sec. 1926.21—the general training requirements for construction.

Moreover, OSHA's comprehensive health standards, Secs. 1910.1001–1910.1200, contain provisions for signs, information and training to inform employees of hazards and of procedures necessary to reduce the risks of hazardous exposures.

The rationale for these standards requirements is, however, applicable in relation to all hazards. OSHA has found that successful safety and health management includes education of employees about all significant hazards and potential hazards to which they may be exposed and training on how to perform their work without harm from those hazards. The cooperation of employees in identifying and controlling hazards is critical, not only for their own safety and health but for that of others as well.

The importance of education and training is reflected by the disproportionately high injury rates among workers newly assigned to work tasks. Although some of these injuries may be attributable to other causes, a substantial number are directly related to inadequate knowledge of job hazards and safe work practices. The Bureau of Labor Statistics reports that in 1979, 48 percent of workers injured had been on the job less than one year (Ex. 2–7).

BLS studies show that during 1979 employees injured at work often lacked information to protect themselves:

(1) Of 724 workers hurt while using scaffolds, 27 percent said they received no information on safety requirements for installing the kind of scaffold on which they were injured (Ex. 2–8).

(2) Of 868 workers who suffered head injuries, 71 percent said they had no instruction concerning the hazards in the workplace that necessitate the wearing of hard hats (Ex. 2–9).

(3) Of 554 workers hurt while servicing equipment, 61 percent said they were not informed about lockout/tagout procedures (Ex. 2–10).

The extent of hazard information needed by workers for self-protection varies, but would include: (1) The general hazards and safety rules of the worksite, (2) specific hazards, safety rules and practices related to particular work assignments and, (3) the employee's role in emergency situations. Such information and training is particularly relevant to hazards that may not be readily apparent to, or within the ordinary experience and knowledge of, the employee.

(ii) Ensure that supervisors understand their responsibilities for safety and health, including: (1) Analysis of the work under their supervision to identify unrecognized potential hazards, (2) maintenance of physical protections in their work areas, and (3) reinforcement of employee training on the nature of potential hazards in their work and on needed protective measures, through continued performance feedback and through enforcement of safe work practices when necessary.

(b)(4)(ii) First-line supervisors have an especially critical role in safety and health protection because of their immediate supervision of the work being performed. Their training is therefore emphasized separately. Although they may have other safety and health responsibilities, those listed in the guideline are proposed to merit particular attention.

(iii) Ensure that managers understand their safety and health responsibilities, as described under "Management Commitment."

(b)(4)(iii) Because there is a tendency in some businesses to consider safety and health a staff function and to

neglect the training of managers in safety and health responsibilities, the importance of managerial training is noted separately. Managers who understand both the way and the extent to which effective safety and health protection impacts on the overall effectiveness of the business itself, and who understand their critical role in ensuring effective protection, are far more likely to ensure that the necessary safety and health management systems operate effectively.

III. Issues for Discussion

A. *The Nature of the Risk.* What is the extent of risk to employees resulting from hazards that exist because employers and employees have not actively and systematically attempted to identify them? Or, if they have been identified, what is the extent of risk which results from each of the following: (1) Where no one in the organization has specific responsibility, authority and/or resources to correct or control them; (2) where employees and/or supervisors have not been made aware of these hazards or trained in the necessary precautions to control or avoid them; (3) or where systematic provisions for controlling them have not been continuously maintained?

What is the extent of risk to employees from conditions and operations which may foreseeably change in a way which creates a hazard?

B. *The Value of Safety and Health Programs.* Are verifiable sources of data available to document the value of benefits and the cost of safety and health programs, apart from those already referenced in this Request?

1. How can the value of "losses avoided" through effective safety and health management best be measured?

a. Is the comparison of a site's injury rates with rates for its industry the most viable measure of "injuries avoided?" Given that BLS illness incidence rates do not capture a significant portion of work-related illnesses, is there an alternative measure for estimating "illnesses avoided?"

b. Are there reasonably accurate data on the costs of injuries and illnesses? What costs should be included in such data? It is generally agreed that direct costs, such as medical expenses and workers' compensation claims, are only a fraction of the total cost of an injury or illness. Indirect costs, such as production time lost by the injured employee and others, hiring and/or retraining replacement workers, reduced employee morale and related lower efficiency, accident investigation and increased workers' compensation insurance rates, may be several times greater than the direct costs. A Business Roundtable study ("Improving Construction Safety Performance," January, 1982) on the costs of a lost-worktime injury for construction found that the ratio of indirect to direct costs varies from 4 to 1 to as high as 17 to 1 (Ex. 2–11). Are more current, comparable data available for general industry? Are data available for shipyard employment and longshoring?

2. How can the costs of effective safety and health management best be measured? When safety and health responsibilities are assigned throughout the organization, is it possible to determine the costs of activity motivated by safety and health concerns? How much will the complexity or formality of the safety and health program affect those cost determinations? For example, is it less costly to the employer to have a system of employee reports of hazards which consists of oral notification of supervisors that to have one involving forms on which the reports are written? The latter system may be needed where there are many employees reporting hazards but the former may be adequate where there are few employees or few hazards to report.

3. Do an employer's beliefs and attitudes regarding accident causation influence the nature of loss prevention activities? For example, it has been stated in some quarters that many, perhaps most, accidents are the result of human carelessness and, hence, are uncontrollable. On the other hand, it has been OSHA's experience, in the Voluntary Protection Programs particularly, that effective safety and health management can have a major impact in reducing both the opportunities for exposure to hazards and the behavior of employees in identifying and guarding against hazards. Could some official, comprehensive guidance from OSHA be a potentially valuable means for expanding the latter attitude and counteracting the former? Are there other ways that could be more effective?

C. *Suitable Language.* 1. Do the specific elements suggested cover the management needs for operating an effective safety and health program? Are there other elements that should be included? Should any of the suggested be eliminated? Are there ways in which these elements can be expressed more clearly or usefully?

2. Is the suggested language general enough to cover the needs of the variety of industries specified, or are there better ways of addressing this issue? If so, please specify and include the rationale for the recommendation.

D. *The Most Appropriate Methods for Educating Employers.* OSHA seeks guidance as to the most effective means of educating employers about effective safety and health management and its benefits. OSHA is currently developing a course aimed at a broad spectrum of private sector employers to teach these guidelines or a variation of them. It is also considering outreach through trade associations to assist in the design of industry-specific safety and health management programs. These efforts would complement the safety and health management assistance provided to small businesses by the OSHA-sponsored consultation services provided by State governments.

OSHA has previously published the elements of an effective occupational health program agreed upon by OSHA, organized labor and industry representatives; voluntary training guidelines; informational pamphlets and significant quantities of safety and health management literature.

Are there other methods of promoting understanding of effective safety and health management that OSHA should consider as well?

E. *Incentives for Effective Management.* OSHA is also requesting comment on possible incentives which may stimulate increased employer action to establish effective safety and health management practices. It is OSHA's experience that the most important incentives are the benefits of such practices—that is, the reduction in injuries and illnesses and in attendant costs, and the consequent improvements in productivity. These benefits may not appear immediately, however, and employers may not make the necessary investment in organizational change without a clear sense of immediate benefits. Are there incentives which might encourage employers to make this investment?

OSHA currently offers recognition to employers with outstanding safety and health management through the Voluntary Protection Programs. The Program for Inspection Exemption through Consultation provides recognition to smaller businesses that demonstrate effective management to the OSHA-funded consultation services. The OSHA standards on safety and health management in construction provide incentives in that industry.

Would the publication of formal, comprehensive guidelines as outlined here be an effective means of motivating employers to improve the management of worker safety and health protection?

Are there voluntary mechanisms, as yet untried by OSHA, which would increase the effectiveness of voluntary guidelines? If so, what are they?

Are there other means of motivating employers to use these management elements, beyond the guidelines, which OSHA should consider?

Authority: This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW, Washington, DC 20210. It is issued under Sec. 41, Longshoremen's and Harbor Worker's Compensation Act (33 U.S.C. 941); Secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable; 29 CFR Part 1911.

Signed at Washington, DC, this 8th day of July, 1988.

John A. Pendergrass,

Assistant Secretary.

Suggested Guidelines

(a) *General.* Employers are advised to institute and maintain in their establishments a program which provides policies, procedures and practices that are adequate to recognize and protect their employees from occupational safety and health hazards. An effective program will include provisions for the identification, evaluation and control or prevention of general workplace hazards, specific job hazards and potential hazards arising from foreseeable conditions. The degree of formality and complexity of an effective program will vary with the size of the establishment and the complexity of the worksite hazards. Especially in smaller sites, the extent to which the program is described in writing is less important than how effective it is in practice.

(b) *Specific Elements.* An effective occupational safety and health program will include each of the following actions in an appropriate form:

(1) *Management Commitment.*

(i) Establish a clear goal for the safety and health program and objectives for meeting it; communicate them to all employees; and ensure that employees can see top management involvement.

(ii) Provide for employee involvement in the structure and operation of the program and in decisions which affect their safety and health.

(iii) Assign and communicate responsibility for all aspects of the program, so that managers, supervisors and employees at all organizational levels know what performance is expected of them.

(iv) Provide adequate authority and resources to meet the assigned responsibilities.

(v) Hold managers, supervisors and employees accountable for meeting their responsibilities.

(vi) Review program operations at least annually to evaluate their success in meeting the goal and objectives, and revise the program and/or the objectives when they do not meet the goal of effective safety and health protection.

(2) *Worksite Analysis.*

(i) So that all hazards and potential hazards are identified, provide for competent persons (1) to conduct comprehensive worksite surveys periodically, (2) to analyze new processes, materials and equipment, and (3) to perform routine job or phase hazard analyses.

(ii) Provide for regular site inspections by competent persons and encourage employee reports of hazards, to identify new or previously missed hazards and failures in hazard controls.

(iii) Provide for investigation of accidents and "near miss" incidents by competent persons, to identify their causes and means for their prevention.

(3) *Hazard Prevention and Control.*

(i) Establish procedures for ensuring the timely correction and control of hazards, however detected, through engineering techniques where feasible, through personal protective equipment, and through safe work procedures which are understood by all affected employees and enforced by a clearly communicated disciplinary system.

(ii) Provide for equipment maintenance, to prevent hazardous breakdown.

(iii) Provide for prompt and appropriate correction of hazards to which, due to breakdowns of hazard prevention and control systems, employees are exposed.

(iv) Plan and prepare for emergencies, with training and drills as needed.

(v) Establish a medical program which includes availability of first aid on site and of physician and emergency medical care nearby.

(4) *Safety and Health Training.*

(i) Ensure that all employees understand the hazards to which they may be exposed and how to prevent harm to themselves and others from exposure to these hazards.

(ii) Ensure that supervisors understand their responsibilities for safety and health, including: (1) Analysis of the work under their supervision to identify unrecognized potential hazards, (2) maintenance of physical protections in their work areas, and (3) reinforcement of employee training on the nature of potential hazards in their work and on needed protective measures, through continued performance feedback and through enforcement of safe work practices when necessary.

(iii) Ensure that managers understand their safety and health responsibilities, as described under "Management Commitment."

[FR Doc. 88–15911 Filed 7–14–88; 8:45 am]

BILLING CODE 4510-26-M

---

29 CFR Part 1953

Supplement to Wyoming State Plan; Request for Public Comment

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Request for Comment: Wyoming State Standard.

SUMMARY: This notice invites comments on the Wyoming standard for Multi-Piece Rim and Single-Piece Rim Wheels. This standard was submitted on April 10, 1984, in response to a Federal program change under 29 CFR 1953.21. Wyoming's standard for Multi-Piece Rim and Single-Piece Rim Wheels is substantively different from the Federal Occupational Safety and Health Administration (OSHA) standard found at 29 CFR 1910.177. The State standard, which applies to all industries except construction, is broader in scope than the Federal standard, which does not apply to agriculture. Where a State standard adopted pursuant to an OSHA-approved State plan differs significantly from a comparable Federal standard, the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (the Act) requires that the State standard must be "at least as effective" as the Federal standard. In addition, if the standard is applicable to a product distributed or used in interstate commerce, it must be required by compelling local conditions and not pose any undue burden on interstate commerce. OSHA, therefore, seeks public comment on whether the Wyoming standard meets the above requirements.

DATES: Written comments should be submitted by August 15, 1988.

ADDRESSES: Written comments should be submitted in quadruplicate to the Director, Federal-State Operations, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3700, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 523–8148.

SUPPLEMENTARY INFORMATION:

A. Background

The requirements for adoption and enforcement of safety and health standards by a State with a State plan approved under section 18(b) of the Act are set forth in section 18(c)(2) of the Act and in 29 CFR Part 1902, 29 CFR 1952.7, and 29 CFR 1953.21, 1953.22, and 1953.23. OSHA regulations (29 CFR 1953.23(a)(1)) require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register** (29 CFR 1953.23(a)).

A 30-day response time is required to State adoption of a standard comparable to a Federal emergency temporary standard 29 CFR 1953.22(a)(1)). Newly adopted State standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in 29 CFR Part 1953, but are enforceable by the State prior to Federal review and approval. Section 18(c)(2) of the Act provides that State standards must be at least as effective as their Federal counterparts, and that if State standards which are not identical to Federal standards are applicable to products which are distributed or used in interstate commerce, such standards must be required by compelling local conditions and must not unduly burden interstate commerce. (This latter requirement is commonly referred to as the "product clause.")

On May 3, 1974, notice was published in the **Federal Register** (39 FR 15394) of the approval of the Wyoming State plan and the adoption of Subpart BB to Part 1952 containing the decision. The Wyoming State plan provides for the adoption of State standards in the following manner.

The Wyoming Occupational Health and Safety Department either proposes to adopt Federal standards or drafts such standards as it considers necessary after agency review and research and consultation with other persons knowledgeable in the specific field for which the standards are being formulated. The standards are submitted to the Wyoming Occupational Health and Safety Commission for its approval. The Wyoming plan provides for adoption of a standard as a State standard after public notice and hearing are published in accord with the Wyoming Administrative Procedure Act, and the Secretary's rules on rule-making.

The Federal standard for Multi-Piece Rim and Single-Piece Rim Wheels was promulgated on February 3, 1984 (49 FR 4338). After public input, the Wyoming Health and Safety Commission adopted a standard for Multi-Piece Rim and Single-Piece Rim Wheels on May 18, 1984. The standard became effective on July 27, 1984. By letter dated April 10, 1984, with attachments, from Donald D. Owsley, former Administrator, Wyoming Occupational Health and Safety Department, to Byron Chadwick, OSHA Regional Administrator, the State submitted the standard (Safety rules and regulations for General Industry as required by Wyoming Statute 1977, section 27–11–105 (a)(viii)) and incorporated the revision as part of its occupational health and safety plan.

B. Issues for Determination

The Wyoming standard in question is now under review by the Assistant Secretary to determine whether it meets the requirements of section 18(c)(2) of the Act and 29 CFR Parts 1902 and 1953. Public comment is being sought by OSHA on the following issues.

(1) "At Least as Effective" Requirement

OSHA has preliminarily determined that the Wyoming standard for Multi-Piece Rim and Single-Piece Rim Wheels, although different, appears to be "at least as effective" as the comparable OSHA standard (29 CFR 1910.177). The State standard, which applies to all industries except construction, is broader in scope than the Federal standard, which does not apply to agriculture. Finally, the State has made some minor editorial changes relating to paragraph numbering and referencing to specific Wyoming Rules and Regulations which do not affect the requirements of the standard. Public comment on the effectiveness requirement is solicited for OSHA's consideration in its final decision on whether or not to approve the State's standards.

(2) Product Clause Requirement

OSHA is also seeking through this notice public comment on whether the Wyoming standard described above:

(a) Is applicable to products which are distributed or used in interstate commerce;

(b) If so, whether it is required by compelling local conditions; and

(c) Unduly burdens interstate commerce.

C. Public Participation

Interested persons are invited to submit written data, views and arguments with respect to the issues described above. These comments must be postmarked on or before August 15, 1988 and submitted in quadruplicate to the Director, Federal-State Operations, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3700, 200 Constitution Avenue, NW., Washington, DC 20210. Written submissions must clearly identify the issues which are addressed and the position taken with respect to each issue. The Occupational Safety and Health Administration will consider all relevant comments, and will thereafter publish notice of the decision approving or disapproving it.

D. Location of Supplement for Inspection and Copying

A copy of the Wyoming standard on Multi-Piece Rim and Single-Piece Rim Wheels, along with approved State provisions for adoption of standard, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of Labor, Room 1576, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; the Occupational Health and Safety Department, 604 East 25th Street, Cheyenne, Wyoming 82002; and Director, Federal-State Operations, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3700, 200 Constitution Avenue, NW., Washington, DC 20210.

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9–83 (43 FR 35736).

Signed this 11th day of July, 1988, in Washington, DC.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 88–15912 Filed 7–14–88; 8:45 am]

BILLING CODE 4510–26–M

FEDERAL COMMUNICATIONS COMMISSION

[Gen. Docket No. 88–328; FCC 88–205]

47 CFR Part 73

Revision of Application for Construction Permit for Commercial Broadcast Station

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission issued this Notice of Proposed Rulemaking in response to a proposal informally presented to the Commission by an *ad hoc* committee of the Federal Communications Bar Association to revise FCC Form 301 to include additional informational requirements. The FCBA contends that the additional informational requirements will serve to: (1) Curtail the filing of sham applications; (2) encourage settlements among competing applications; and (3) facilitate the comparative hearing process.

DATES: Comments due on or before August 26, 1988. Reply Comments due on or before September 12, 1988.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: A. Holly Berland, Federal Communications Commission, Washington, DC, (202) 632-6990.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, adopted June 20, 1988, and released July 5, 1988. The full text of this Commission decision and the rule amendments are available for inspection and copying during normal business hours in the FCC Docket Branch (Room 320), 1919 M Street NW., Washington, DC. The full text of this decision and the rule amendments may also be purchased from the Commission's contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

The collection of information requirements contained in the proposed revisions to FCC Form 301 has been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons wishing to comment on these information collection requirements should direct a copy of their comments to the Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for Federal Communications Commission.

Summary of Notice

The Commission is proposing to revise FCC Form 301 to include additional informational requirements for applicants for new commercial broadcast stations. Specifically, the proposed revisions would:

(1) Require corporate and partnership applicants to specify both the date and place of incorporation and place of organization;

(2) Require applicants to identify all equity owners, including limited partners and non-voting stockholders;

(3) Reinstate Item 9 from the pre-1981 Form 301, which called for the disclosure of current or future ownership rights;

(4) Reimpose some financial disclosure requirements, including: (i) Listing of applicants' estimated costs of construction and the first three months of operation, and (ii) identification of applicants' sources of funds; and

(5) Include detailed instructions regarding financial qualification requirements.

In addition, the Commission requests comments on changing the standard for evaluating the availability of funds for new broadcast station applications from the current "reasonable assurance" standard to a "firm financial commitment" standard.

Ex Parte

This is a non-restricted notice and comment rulemaking proceeding. *See* § 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

Initial Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, this proceeding will somewhat increase small business entities' costs in filing an application for a construction permit for a new broadcast station. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Notice of Proposed Rulemaking.

Comments

Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before August 26, 1988, and reply comments on or before September 12, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Legal Basis

The Commission has authority to institute the proposed revisions to FCC Form 301 pursuant to section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-15973 Filed 7-14-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Export of American Alligators Harvested in 1988

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed findings and rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) regulates international trade in certain animal and plant species. As a general rule, exports of animals and plants listed on Appendix II of the Convention may occur only if a Scientific Authority has advised a permit-issuing Management Authority that such exports will not be detrimental to the survival of the species, and if the Management Authority is satisfied that the animals or plants were not obtained in violation of laws enacted for their protection.

This notice announces proposed findings by the United States Scientific Authority and Management Authority on the export of alligators harvested in Florida, Georgia, and South Carolina in 1988. These proposed findings also stipulate that monitoring procedures previously established for other States including Florida, be extended to include Georgia, and South Carolina. The Service also requests comments on these proposed findings.

DATE: The U.S. Fish and Wildlife Service (Service) will consider comments received by July 25, 1988 in making its final determinations and rule.

ADDRESS: Please send correspondence concerning this notice to the Office of Scientific Authority, Mail Stop: Room 527 Matomic Building, U.S. Fish and Wildlife Service, Washington, DC 20240. Materials received will be available for public inspections from 8:00 a.m. to 4:00 p.m., Monday through Friday, at the Office of Scientific Authority, room 537, 1717 H Street, NW. Washington, DC or at the Office of Management Authority, room 400, 1375 K Street, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Scientific Authority Finding—Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (202) 653-5948.

Management Authority Findings—Mr. Marshall P. Jones, Office of Management Authority, U.S. Fish and

Wildlife Service, Washington, DC 20240, telephone (202) 343–4968.
Export Permits—Mr. Richard K. Robinson, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (202) 343–4955.
State Export Programs—Mr. S Ronald Singer, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (202) 343–4963.

SUPPLEMENTARY INFORMATION: On September 2, 1986, **Federal Register** (51 FR 31130), the Service published a rule granting export approval for American alligator (*Crocodylus mississippiensis*) from specified States for the 1986–88 harvest seasons. The purpose of this proposed rule is to add Georgia and South Carolina to the list of States for which alligator export would be approved, and to issue Scientific Authority findings on a revised harvest program in Florida to enable continued export of alligators from that State.

Scientific Authority Findings

Article IV of CITES requires that an export permit for any specimen of a species included in Appendix II shall only be granted when certain findings have been made by the Scientific Authority and Management Authority of the exporting country. The Scientific Authority must advise "that such export will not be detrimental to the survival of that species" before a permit can be granted.

The American alligator is listed in Appendix II to respond both to problems of potential threat to the survival of American alligators [Convention Article II.2(a)] and its similarity in appearance to other crocodilians that are threatened with possible extinction (Convention Article II.2(b)).

The Regional 10-year review of the Convention's Appendices confirmed the suitability of this treatment, as set forth in the proposal that the Conference of the Parties adopted in 1979 to transfer this species to Appendix II.

The marking of hides with specified tags and documentation of shipments of meat and parts, as well as the issuance of export permits, is considered sufficient to address the issue of identification due to the similarity in appearance between American alligators and other listed species (see Management Authority findings for tag specification).

Inasmuch as the alligator is also listed because of a potential threat to its survival, the Service must determine if exports will not be detrimental to the survival of the American alligator itself.

Guidelines developed for Scientific Authority advice on exports of American alligators under the provisions of Convention Article II.2(a), are summarized as follows:

A. Minimum requirements for biological information:

(1) Information on the condition of the population, including trends (the method of determination to be a matter of State choice), and population estimates where such information is available;

(2) Information on total harvest of the species;

(3) Information on distribution of harvest; and

(4) Habitat evaluation.

B. Minimum requirements for a management program:

(1) There should be a controlled harvest, methods and seasons to be a matter of State choice;

(2) All hides should be registered and marked; and

(3) Harvest level objectives should be determined annually by the State.

In applying these guidelines, the Service considers the following types of information on the conditions of the population: (a) A current estimate (if such information is available) of the total number of animals in the preharvest population derived by extrapolating the number of animals per unit area in each of the major habitat types to obtain an estimate of the total number of animals where the number of animals per unit area is determined by direct count, by indirect indications of abundance in the State, or by population modeling; (b) a description of ongoing research being conducted to assess the distribution, abundance, or general condition of the species in the State, with a summarization of results obtained, including results of any analyses of age structure or reproductive parameters; and (c) an assessment of long-term trends of the species in the State, and the relationship of these trends to habitat conditions, management practices, harvest pressure, and/or other factors.

Information on anticipated harvest to be considered by the Service should include; (a) the number of animals to be harvested (by county or game management unit, if data are available at these local level(s)); (b) the number of alligator hunters expected to be licensed; and (c) the time of the harvest season.

In the case of the alligator, as with most other wild animals, the resource is monitored by a variety of techniques that yield information used in evaluating the condition of a population. As these data are accumulated over time, they reflect trends and call attention to changes in the populations. Habitat information, indices of population size, age and sex structure, and harvest information, are all used to evaluate population status. Although the Endangered Species Act Amendments of 1982 provided that population estimates are not to be required for the approval of export of Appendix II wildlife, if such estimates are provided by the States or are otherwise available, they will be considered together with information of the types listed above in making findings on nondetriment.

The status of the American alligator has dramatically improved throughout its range over the last 10 years. One of the primary reasons for this improvement has been the effective management programs run by State wildlife agencies. The Service expects these management programs to continue to be effective in conserving the American alligator in the future.

The export of American alligators taken in the 1986 through 1988 harvest seasons in Florida, Louisiana, and Texas was previously approved by the Service (1 FR 31130). At that time, the Service found that "current information on the population status, management, and harvest" available from those States as well as other information collected by the Service, supported a finding that the export of alligators taken in accordance with State regulations in Florida, Louisiana, and Texas during those harvest seasons would not be detrimental to the survival of the species in those States.

The States of South Carolina and Georgia have requested that the export of alligators taken during State-supervised nuisance control programs be permitted. In addition, the State of Georgia has requested approval for the export of American alligators raised on "farms", and finally the State of Florida from which the export of alligators was previously approved is planning to increase the areas in which alligators may be taken.

Based on alligator population and habitat information received from the South Carolina Wildlife and Marine Resources Department and their estimated take of up to 500 alligators in conjunction with their nuisance alligator control program, the Service proposes to issue Scientific Authority advice in favor of alligator export from the State. Based on the expected limited take under Georgia Department of Natural Resources' nuisance control program and upon available information indicating that the populations in Georgia are stable within those areas with suitable habitat, the Service

proposes to issue Scientific Authority advice to allow the export of alligators taken under this State's program. Furthermore, the export of alligators from designated, State-approved farms in Georgia represent animals bred in captivity and their export should not be detrimental to the survival of the wild population. Therefore, the Service proposes to allow the export of specimens from these "farms".

The State of Florida implemented harvest programs on a limited number of experimental areas in 1986, and now plans to expand this program allowing harvest on areas throughout the State. The previously accepted population monitoring system continues to indicate a stable or increasing population and the expanded program would retain harvest quotas on an annual basis. Based on the population information and proposed quotas developed by the Florida Game and Fresh Water Fish Commission, the Service proposes to issue Scientific Authority advice to continue to allow the export of alligators taken in Florida in 1988.

Based upon information presented by Florida, Georgia, and South Carolina, and considering the basis for the species' listing on Appendix II of the Convention, the Service proposes to issue Scientific Authority advice in favor of export of alligators harvested in 1988 from these States, and proposes the addition of Georgia and South Carolina to the list of those States already granted export approval for this species.

Management Authority Findings

Exports of Appendix II species are to be allowed under the Convention only if the Management Authority is satisfied that the specimens were not obtained in contravention of laws enacted for the protection of the involved species. The Service, therefore, must be satisfied that alligator hides, meat or products were not obtained in violation of State or Federal law in order to allow export. Evidence of legal taking for American alligator is provided by Service-approved State tagging programs. The Service annually contracts for the manufacture and delivery of special Convention animal-hide tags for export-qualified States. In a **Federal Register** notice, published on April 24, 1986 (51 FR 15548), the Service announced the introduction, use, and protection of a US-CITES tag symbol. This symbol appears on every Service-approved export tag to provide legal evidence of export approval for certain Convention Appendix II listed species.

Guidelines developed for Management Authority findings on State American alligator export programs, slightly modified from the 1986–1988 rule, under provisions of Convention Article IV.2(b), are summarized as follows:

(1) Current State alligator trapping and tagging, meat, and parts processing regulations must be on file with the Office of Management Authority;

(2) Sample reporting forms, export tag, meat packing seal, and parts tag must be on file with the Office of Management Authority;

(3) The export tag must be durable and permanently locking, and must show U.S.-CITES logo, State of origin, year of take, species, and be serially unique;

(4) The export tag, meat seal, and parts tag must be applied to all hides, meat or parts, within a minimum time after take or processing, as specified by State law, and such time should be as short as possible to minimize movement of untagged hides, meat, or parts;

(5) The tags or seals must be permanently attached, as mandated by the State;

(6) All alligator harvesters and processors must be State registered;

(7) All hide, meat, and parts dealers are to be State registered;

(8) All State-registered alligator harvesters, processors, and dealers must make available their alligator harvest and commerce data to the State on at least an annual basis, as specified by the State;

(9) State-registered alligator dealers and licensed harvesters allowed to attach export tags to the hides must account for all tags received and must return unused tags to the State within a specified time after the harvest period closes; and

(10) Fully manufactured alligator hide products may be exported from the United States when the State-hide Convention export tags, removed from hides contained in the manufactured products, are surrendered to the Service prior to export.

Monitoring State Programs

From monitoring existing State programs for the American alligator in Florida, Louisiana, and Texas, the Service expects these States will continue to satisfy Convention requirements. States seeking for the first time to establish a harvest program for alligators should apply for Convention export approval no later than January 31 of the year they plan to initiate such a program. To ensure that export-approved States maintain successful programs and that export is not detrimental to the survival of the species, the Service plans to continue annual monitoring of State management and export marking programs through evaluation of State information and export reports from the ports, no later than May 31 of each year.

Proposed Findings

The Service proposes to approve exports of 1988 alligators harvested in Florida, Georgia, and South Carolina on the grounds that both Scientific Authority and Management Authority export requirements are satisfied.

Public Comments Solicited

The Service requests comments and recognizes that a public comment period is important concerning the Federal actions described herein. However, a standard 30-day comment period would additionally delay publication of final findings for the export of alligators harvested in 1988, that in turn, may adversely affect those interested in exporting American alligators.

The Service, therefore, finds that good cause exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, to grant a 10-day public comment period.

The proposal is issued under authority of the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.)*. The authors are S Ronald Singer, Office of Management of Authority, and Dr. Charles W. Dane, Office of Scientific Authority.

Note.—The Department had previously determined that the export of alligators of various States taken in the 1986-1988 harvest seasons, was not a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(a)(c) of the National Envronmental Policy Act, therefore, the preparation of an environmental Impact Statement was not required (48 FR 37494). Because these proposed findings do not significantly differ from the previous export findings, the previous determination not to prepare an Environmental Impact Statement on export of aligators taken during the 1986-1988 harvest seasons in certain States (51 FR 31130) remains appropriate. The Department had also previously determined that such harvest was not a major rule under Executive Order 12291 and did not have a significant economic affect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). Because the existing rule treats exports on a State-by-State basis and proposes to approve export in accordance with a State management/export program, the rule will have little effect on small entities in and of itself. This proposed rule does not contain any information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 50 CFR Part 23

Endangered and threatened wildlife, Exports, Fish, Imports, Plants (agriculture), Treaties.

Accordingly, the Service proposes to amend Part 23 of Title 50, Code of Federal Rgulations, as set forth below:

PART 23—ENDANGERED SPECIES CONVENTION

1. The authority citation for Part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249; and Endangered Species Act of 1973, 87 stat. 884, 16 U.S.C. 1531 *et seq.*

Subpart F—Export of certain Species

2. In § 23.57 revise paragraphs (a) and (b), and remove paragraph (c) through (g) to read as follows:

§ 23.57 American alligator (Alligator mississipiensis).

* * * * *

(a) 1979–1988 harvests (wild and captive bred for each year unless noted).

	Florida	Georgia	Louisiana	South Carolina	Texas
1979 (*)	+	–	+	–	–
1980	+	–	+	–	–
1981	+	–	+	–	–
1982	+	–	+	–	–
1983	+	–	+	–	–
1984	+	–	+	–	+
1985	+	–	+	–	+
1986	+	–	+	–	+
1987	+	–	+	–	+
1988	+	+	+	+	+

Legend:
+ Export approved.
– Export not approved.
*And prior years.

(b) Conditions on export. (1) Each hide must be cleary identifed as to species, Country and State of origin, and season of taking, and must be marked by a permanently attached, serially numbered tag of a type approved by that Service that is attached under conditions established by the Service. Fully manufactured hide products may be exported from the United States when State hide export tages, removed from hides contained in the products, are surrendered to the Service prior to export.

(2) Meat from legally harvested and tagged alligators shall be packed in uniform containers, permanently sealed and labeled as required by State law. Bulk meat containers shall be marked with a State "parts tag" or "bulk meat tag" permanently attached indicating, at a minimum, State of origin, year of take, species, original hide export tag number, weight of container, and identification of State-licensed process or packer.

(3) Large individual parts shall have a "parts tag" permanently attached, while smaller parts may be packed with a "parts tag" permanently attached to the package. "Parts tags" shall all supply the same information as described for such tags used to mark alligator meat. Alligator skulls shall carry a "parts tag" and also be marked with the number of the original U.S.-CITES export tag used for the hide of that individual, and other markings, as required by State law.

Dated: June 14, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–15963 Filed 7–14–88; 8:45 am]
BILLING CODE 4310-55-M

---

50 CFR Part 23

Export of American Ginseng Harvested in 1988–90 Seasons

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) regulates international trade in certain animal and plant species. Export of animals and plants listed in Convention Appendix II may occur only if the Scientific Authority has advised the permit-issuing Management Authority that (1) such export will not be detrimental to the survival of the species, and (2) this export will maintain the species throughout its range at a level consistent with its role in the ecosystems in which it occurs, and (3) if the Management Authority is satisfied that the animals or plants being exported were not obtained in violation of laws for their protection. Export of cultivated specimens of plants listed in Appendix II may occur only if the Management Authority is satisfied that the plants being exported were artificially propagated.

This document announces proposed findings by the United States Scientific Authority and Management Authority for export of American ginseng from certain States for the 1988–90 harvest seasons.

The Service began to make multi-year findings for the export of American ginseng on a State-by-State basis when it issued Scientific Authority and Management Authority findings covering the 1982–84 harvest seasons. This was followed by multi-year findings for ginseng harvested from certain States for the 1985–87 harvest seasons. Certain States were not granted multi-year export approval because they had not satisfied Management Authority guidelines. The Service continues to seek data and information on topics described in this proposed rule as a basis for determining whether to initiate or to continue approval of export from specified States for the 1988–90 harvest seasons.

Monitoring State ginseng programs for 10 years has shown the Service that States from which ginseng export has been approved will continue to satisfy Convention requirements. To ensure that this is so, the Service will continue annual monitoring in accordance with the procedures described herein. This monitoring will include analysis of program reports made available to the Service no later than May 31 every year from each State from which ginseng export is approved. These program reports document the most recent harvest and current status of ginseng management in that State.

DATE: The Service will consider information and comments received by August 15, 1988, in making its final rule.

ADDRESS: Please send correspondence concerning this document to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20038–7329. Materials received will be available for public inspection from 7:45 a.m. to 4:15 p.m., Monday through Friday, at the Office of Management Authority, Room 400, 1375 K Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Scientific Authority:* Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, 527 Matomic Building, Washington, DC 20240, telephone (202) 653–5948.

Management Authority: Marshall P. Jones, Office of Management Authority, P.O. Box 27329, Central Station, Washington, DC 20038–7329, telephone (202) 343–4968.

Export Programs: S Ronald Singer, Office of Management Authority, P.O. Box 27329, Central Station, Washington, DC 20038–7329, telephone (202) 343–4963.

SUPPLEMENTARY INFORMATION: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) regulates international trade in Convention listed species. Export of species listed in Appendix II of the Convention may only occur upon approval of both a Scientific

Authority and a Management Authority of the country of export. In the United States, Scientific Authority and Management Authority responsibilities are assigned to the Secretary of the Interior and are carried out by the U.S. Fish and Wildlife Service (Service). This notice concerns the Service's findings on the export of American ginseng (*Panax quinquefolius*) taken in the 1988–90 harvest seasons.

The Convention provides for listing of plants and specifically designated parts and derivatives of Appendix II plants. Since 1973, whole plants and roots of *Panax quinquefolius* have been so listed. Then, in 1985, for reasons unrelated to the trade in American ginseng, the Parties to the Convention revised the listing practices and decided to regulate not only whole specimens of plants on Appendix II but also all their parts and derivatives, *unless* specifically exempted. As a consequence, the listing for ginseng needed restatement, and the listing proposal adopted by the Parties (November 22, 1985, **Federal Register**, 50 FR 48212) continues to regulate ginseng exports, including plants, whole roots, basically intact roots, and root chunks or slices.

In 1982, the Service reported that it had found that the status of wild ginseng did not appear to vary greatly from year to year within any given State, and that existing information compiled was adequate to justify multi-year findings under the Convention (47 FR 43701, October 4, 1982). This initial multi-year rule was followed by a second such rule for the 1985–1987 harvest seasons (50 FR 39691, September 30, 1985; 50 FR 42027, October 17, 1985). The Service has used information compiled since 1977 to make multi-year findings under the Convention. Even though findings were made approving the export of ginseng harvested in certain States in the 1985–87 seasons, the Service indicated it would continue to monitor the status of ginseng each year, and would retain the option of revising the findings at any time if new information showed the need for a change.

The Service now requests current biological and harvest information concerning those States previously approved for export and those States not previously approved that are now seeking export approval for ginseng harvested in the 1988–90 harvest seasons. Information submitted in the past need not be resubmitted if it is referred to and its validity re-affirmed. The States of Alabama and Pennsylvania have submitted such information in support of requests for initial export approval of ginseng harvested from those States for the 1988–1990 harvest seasons. New York has submitted such information in support of a request for initial export approval of ginseng harvested in that State for the 1987–1990 harvest seasons.

Scientific Authority Criteria

General criteria used by the Scientific Authority in advising on whether export will or will not be detrimental to the survival of species are as follows (originally described in a notice of July 11, 1977; 42 FR 35800):

1. Whether such export has occurred in the past and has or has not reduced numbers or distribution of the species, nor caused signs of ecological or behavioral stress within the species, or in other species of the affected ecosystems;

2. Whether such export is expected to increase, remain constant, or decrease; and

3. Whether the life history parameters of the species and the relevant structure and function of its ecosystem indicate that present or proposed levels of export will or will not appreciably reduce the numbers or distribution of the species, nor cause signs of ecological or behavioral stress within the species or in other species of the affected ecosystems.

For ginseng, the evaluation for nondetriment by the Scientific Authority, in accordance with these general criteria, will continue to be based on the following information for each affected State, to the extent it is available in annual reports (with sources, accuracy, and still-valid items in previous reports indicated) or from other suitable sources:

1. Historic, present, and potential distribution of wild ginseng by county using State maps with county outlines; distribution of optimal natural habitat on a regional basis in the State, and description of recent trends in loss and/or protection of habitat; and map of locations and information on approximate acreage and percentage of the State's wild ginseng that is on statute-protected lands where collecting is permanently prohibited. (Ginseng is considered as wild if it occurs in naturally perpetuated habitat, where the species is naturally propagated or with only limited planting of local seed by people at or near the site of collection with no subsequent tending of species or habitat before harvest.);

2. Map of the approximate number or density of wild ginseng populations per county or region, and information on the total number of wild ginseng localities in the State;

3. Map of the average number of plants per population or patch, or local abundance of wild ginseng, per county or region of the State; map and information on the population trends per county or region, indicating if populations of wild ginseng are increasing, stable, decreasing, extirpated, or unknown; and discussion of any recent changes from previous years or differences from historical population sizes;

4. A description of the State's annual harvest practices and controls on wild ginseng including a regulated harvest season (States are urged not to permit local harvest until seeds are mature), and harvest requirements such as minimum size or age of collected plants [3-leaf (3-prong) minimum recommended] and on planting seeds at the collection site;

5. Map of the harvest intensity by county or region, indicating if collecting is heavy, moderate, light, none, or unknown, and discussion of any changes from previous years; information on the number of ginseng collectors (diggers) in the State, and on the amount of wild ginseng plants and roots harvested in the State and the amount certified for export, in pounds (dry weight) per year;

6. Information on the average number of wild roots per pound (dry weight) harvested, preferably on a county or regional basis or, if not available, on a statewide basis; and an assessment of any trend in number of wild roots per pound (dry weight) or root sizes over previous years;

7. A description of the State's ongoing research program on wild ginseng and its progress, including a summary of results obtained; and

8. State maps showing those counties in which ginseng is commercially cultivated; and information on the amount of cultivated ginseng plants or roots harvested in the State and the amount certified, in pounds (dry weight) per year. (Ginseng is considered cultivated when it is artificially propagated and maintained under controlled conditions, for example, in intensively or intermittently prepared or managed gardens or patches, under artificial or natural shade.)

Management Authority Criteria

In addition to Scientific Authority advice that ginseng experts will not be detrimental to the survival of the species, the Management Authority must be satisfied that (1) the ginseng was not obtained in contravention of laws for its protection, and (2) whether

it was of wild or artificially propagated origin.

Criteria used by the Management Authority in determining a State program's qualifications for export are that the State has adopted and is implementing the following regulatory measures (see publication of September 30, 1985, 50 FR 39691).

1. A State ginseng law and regulations mandating State licensing or regulation of persons purchasing or selling ginseng collected or grown in that State;

2. State requirements that these licensed or registered ginseng dealers maintain true and complete records of their commerce in ginseng and provide copies of such records of commerce to the State in a signed and dated statement at least every 90 days (generally within 15 days of the end of each quarter of the calendar year);

3. Dealer records required to show date of transaction, whether plants and roots were wild or artificially propagated, if roots were dried or green (fresh) at time of transaction, weight of roots, weight or number of plants, State of origin of plants or roots, and the identification numbers of the State certificates used to ship ginseng from the State of origin. The name and address of the seller or buyer of the ginseng of record shall be maintained by the dealer on his or her own copy of commerce record forms supplied by the State(s) of licensing, and shall be made available to the State ginseng program manager(s) if requested;

4. Inspection and certification by State personnel of all ginseng harvested in the State to authenticate that the ginseng was legally taken from wild or cultivated sources within the State. (Experience has shown the value of an inspection and certification program by a State official who can document both the weight of the ginseng roots (weight or number of plants) in question and that the roots or the plants were legally taken from the wild or artificially propagated in that State);

5. Ginseng unsold by March 31 of the year after harvest must be weighed by the State and the dealer given a weight receipt. Future State export certification of this stock is to be issued against the State weight receipt;

6. The certificate of origin forms must remain in State control until issued at certification and must contain the following information:

—State of origin,
—Serial number of certificate,
—Dealer's State registration number,
—Dealer's shipment number for that harvest season,
—Year of harvest of ginseng being certified,
—Designation as wild or artificially propagated plants or roots,
—Designation as dried or green (fresh) roots, or live plants,
—Weight of roots and plants (or number of plants) separately expressed both numerically and in writing,
—Verified statement by State ginseng official that the ginseng was obtained in that State in accordance with State law of that harvest year,
—Name and title of State-certifying official,
—Date of certification, and
—Signatures of both dealer and State official making certification.

This certificate should be issued in triplicate, with the original designated for dealer's use in commerce, first copy for dealer records, and second copy retained by the State for reference; and

7. State regulations that (a) prohibit export of its ginseng from the State without certification by the State of origin, and (b) require uncertified ginseng supplied to State-registered dealers to be returned to the State of origin within 30 calendar days for certification. Failure to have such ginseng certified will render this root illegal for export from the United States under State law.

Each State from which ginseng export is approved shall make program information, identified by harvest year, available on an annual basis to the Service's Office of Management Authority no later than May 31 (for example, the 1987 State ginseng data should be available by May 31, 1988). This data should be sufficient to satisfy the Scientific Authority criteria and should contain the following information to satisfy the Management Authority criteria.

1. Reaffirm State ginseng program and indicate modifications, if any, concerning:

(a) State ginseng laws and regulations;

(b) Season of ginseng harvest and commerce;

(c) State dealer, digger, and/or grower license or registration rules;

(d) Sample of required ginseng-related licenses, including cost of license and dates of authorized use;

(e) Fees for any ginseng-related license or registration;

(f) Dealer, digger, or grower record-maintenance and reporting requirements;

(g) Sample of current year dealer certificates and reporting forms;

(h) Description of State certification system for wild and cultivated ginseng legally harvested within the State, including controls to minimize uncertified ginseng from moving into or out of the State; and

(i) Name, address, and telephone number of State official to contact concerning such information.

2. The State data should also include information on the following:

(a) Pounds dry weight of wild and of cultivated ginseng roots and weight or number of live plants (i) harvested and (ii) certified by the State, and (iii) the pounds of each bought and sold from in-State and out-of-State sources;

(b) Indicate how dealers not resident in the State obtain certification for ginseng roots harvested in that State and how this type of commerce is controlled by State law;

(c) Indicate ginseng law enforcement procedures, violations discovered, and remedies; and

(d) Sample of current-year State certificate of legal take and origin.

Program for Artificially Propagated Ginseng

In an October 21, 1980, rule (45 FR 68944), the Service announced it would approve export of artificially propagated ginseng only from States for which export of wild-collected ginseng was approved because those States had programs that could adequately document the source of the ginseng. The Service announced in an October 4, 1982, rule (47 FR 43701) that it would approve export of artificially propagated ginseng from other States if procedures had been implemented to minimize the risk that wild-collected plants would be claimed as cultivated. The Service will continue to consider granting such approval.

Previous Export Approval

On September 30, 1985 (50 FR 36961) the Service approved multi-year export of 1985–87 harvested ginseng only from States with a legally regulated ginseng program that provided for a State inspection and certification system and that satisfied all other criteria of both the Management and Scientific Authorities. The export of wild and/or cultivated ginseng harvested from 1985 through 1987 was approved only from the States named in 50 CFR 23.51 (see chart below).

HARVEST YEARS

State	1985	1986	1987
Arkansas	x	x	x
Georgia	x	x	x
Indiana	x	x	x
Illinois	x	x	x
Iowa	x	x	x
Kentucky	x	x	x
Maryland	x	x	x
Minnesota	x	x	x
Missouri	x	x	x

HARVEST YEARS—Continued

State	1985	1986	1987
North Carolina	x	x	x
Ohio	x	x	x
Tennessee	x	x	x
Vermont	x	x	x
Virginia	x	x	x
West Virginia	x	x	x
Wisconsin	x	x	x

x Export approval granted for wild and cultivated ginseng.

Such export approval means that any ginseng legally harvested during these years from Service-approved States may be exported at any time when accompanied by appropriate State certification and valid Federal export documents granted by the U.S. Management Authority. For example, 1985 legally harvested ginseng from a Service-approved State may be exported in 1988 when accompanied by valid 1985 State Certificates of origin, shippers invoice, and a valid export document issued in 1988 by the Management Authority for the 1985 certified ginseng.

Multi-year Findings

As a result of monitoring State ginseng programs and the status of ginseng since 1977, the Service expects that States from which the export of ginseng has been approved will continue to satisfy Convention requirements. Therefore, States previously approved for export of ginseng harvested in 1985–87 need not resubmit new applications for export program approval for the 1988–90 harvest seasons. They must, however, reaffirm the validity of their existing programs and notify the Service of any program changes or modifications in their 1987 annual report. Annual data for the past harvest and reaffirmations of State programs with new program information must have been received for all States from which ginseng export was approved for the 1985–1987 harvest years by the Service. The Service proposes to find that the status of the species and State programs is such that the 1988–90 harvests of ginseng for export will not be detrimental to the survival of the species for the States approved for the 1985–87 harvest seasons. The export of wild and cultivated ginseng plants and roots harvested in the 1988–90 seasons is proposed for the States identified in 50 CFR 23.51(e), as indicated at the end of this document. Because of a State program initiated late in 1987, New York has applied for export approval of ginseng harvested in the 1987–90 harvest seasons, and Alabama and Pennsylvania have applied for export approval for ginseng harvested in the 1988–90 seasons. However, Pennsylvania and New York have not yet completely satisfied Service ginseng export program information requirements. New York State did not certify its 1987 harvested ginseng, making it ineligible for export. The Service is now proposing the addition of these three States to the States listed below in 50 CFR 23.51(e) to be approved for export of ginseng harvested in the years specified. However, unless these States supply the required information, they will not receive export approval in the final notice and rule to be published soon. If export approval is not granted to any State for the 1988 ginseng harvest season, there will be no 1988 harvest for export in that State. Furthermore, such 1988 harvested ginseng may not be exported at any time. States wishing to initiate export programs for ginseng harvested in 1989 or thereafter should begin work with the Service as soon as possible so that their finalized application can be submitted by March 31 of the year in which they anticipate certifying harvested ginseng for subsequent export.

Service export approval would be subject to revision prior to the 1989 and 1990 harvest seasons in any approved State if a review of information reveals that Management Authority or Scientific Authority findings in favor of export must be changed. The Service proposes not to grant general approval for export of ginseng originating in any State not named in 50 CFR 23.51(e) because: (1) The species does not occur there, (2) no harvest of the species is allowed by the State, or (3) the Service does not have current information needed for Management Authority or Scientific Authority findings. To ensure Service-approved States maintain successful programs and that export is not detrimental to the survival of this species, the Service plans to continue annual monitoring of State programs and of information on the status of ginseng populations, especially by the evaluation of annual data from the States and of export documents returned from the ports. Notices will be published in the **Federal Register** in 1989 and 1990 only if new information or changed conditions show reason for revised findings or guidelines.

Export Procedures

Valid Federal Convention documents are necessary to export wild or artificially propagated ginseng plants or roots. Applications for these documents should be sent to the Office of Management Authority at the address given above.

Ginseng may only be exported through ports with personnel and/or facilities of the U.S. Department of Agriculture ("USDA ports") and designated by the U.S. Department of Interior (see 49 FR 49238; October 25, 1984). For each export, the exporter must present to the Port Inspector of the U.S. Department of Agriculture Animal and Plant Health Inspection Service, Plant Protection and Quarantine, the following:

(1) Ginseng plants or roots being exported;

(2) Original State certificates of origin for the ginseng (or foreign export documents for American ginseng imported to the United States). An exporter or dealer may split an original State certificate by striking a line through the original weight, and identify by numbers and writing the lower weight of ginseng being exported. This change in certificate weight must be certified with the written words "I made these changes on (date)" followed by full legal signature of the dealer or exporter. The modified State certificate must bear this certification in original ink form;

(3) Three completed Federal Convention export documents; and (4) one copy of executed shippers invoice.

The Plant Protection and Quarantine port inspector may sign and validate the Convention documents only after a satisfactory inspection of the State certificate of origin, shippers invoice, Convention export documentation and contents of the shipment. Once the Convention documents are validated, the inspector will then forward State certificates, one Convention export document, and shipper's invoice to the Office of Management Authority for recordkeeping and reporting. The second Federal export document is for the exporter, and the remaining Convention export document will authorize the international shipment of the ginseng and will be collected by the importing country.

Request for Information and Comments

The Service requests information and comments on the statuts of ginseng in any individual State; the criteria, procedures and implementation for demonstrating that ginseng is not harvested in contravention of protective laws, that the exported specimen is accurately declared as wild or artificially propagated, and that it originates in a particular State. Comments are also requested on criteria and proposed findings that export will not be detrimental to the species' survival in any approved State.

The Service recognizes that public comment is important concerning the Federal actions described herein. However, a 30-day comment period would delay publication of final findings and may adversely affect ginseng export. Therefore, the Service finds that good cause exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, to grant a 10-day public comment period.

The Service also requests information on environmental or economic impacts and effects on small entities (including small businesses, small organizations, and small governmental jurisdictions) that would result from findings for or against export approval. This information will aid the Service in further evaluating, prior to the final rule, the conclusions stated in the Note below. The proposed rule is issued under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq*; 87 Stat. 884, as amended), and was prepared by S Ronald Singer, Office of Mangement Authority, and Dr. Wayne Milstead, Office of Scientific Authority.

Note.—The Department has determined that these proposed findings are not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and, therefore, the preparation of an Environmental Impact Statement is not requried. The Department determined that the findings for the 1978–87 harvest seasons were not major rules under Executive Order 12291 and did not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). Exporters nromally derive their product from the ginseng harvested in a number of States. Therefore, the approval or disapproval of wild ginseng export from any one State would not significantly affect the industry. Furthermore, because the proposed rule treats exports on a State-by-State basis and proposes to approve export in accordance with State management programs, the rule would have little effect on small entities in and of itself. For the 1988 through 1990 harvest seasons, the Service has analyzed the impacts and again concludes that this would not be a major rule and would not have a significant economic effect on a substantial number of small entities. This proposed rule does not contain any information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 50 CFR Part 23

Endangered and threatened plants, Endangered and threatened wildlife, Exports, Fish, Imports, Plants (agriculture), Treaties.

Proposed Regulation Promulgation

Accordingly, Part 23, Subchapter B of Chapter 1, Title 50, Code of Federal Regulations, is proposed for amendment as set forth below:

PART 23—ENDANGERED SPECIES CONVENTION

1. The authority citation for Part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249; and Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531 *et seq.*

Subpart F—Export of Certain Species

2. In § 23.51 revise paragraph (e) and remove paragraph (f) to read as follows:

§ 23.51 American Ginseng (Panax quinquefolius).

* * * * *

(e) 1982–1990 harvests (wild and cultivated roots for each year unless noted):

HARVEST YEARS

State (1)	1982	1983	1984	1985	1986	1987	1988	1989	1990
Alabama	–	–	–	–	–	–	x	x	x
Arkansas	x	x	x	x	x	x	x	x	x
Georgia	x	x	x	x	x	x	x	x	x
Indiana	x	x	x	x	x	x	x	x	x
Illinois	x	x	x	x	x	x	x	x	x
Iowa	x	x	x	x	x	x	x	x	x
Kentucky	x	x	x	x	x	x	x	x	x
Maryland	x	x	x	x	x	x	x	x	x
Minnesota	x	x	x	x	x	x	x	x	x
Missouri	x	x	x	x	x	x	x	x	x
North Carolina	x	x	x	x	x	x	x	x	x
New York	–	–	–	–	–	–	x	x	x
Ohio	x	x	x	x	x	x	x	x	x
Pennsylvania	–	–	–	–	–	–	x	x	x
Tennessee	x	x	x	x	x	x	x	x	x
Vermont	a	a	x	x	x	x	x	x	x
Virginia	x	x	x	x	x	x	x	x	x
West Virginia	x	x	x	x	x	x	x	x	x
Wisconsin	x	x	x	x	x	x	x	x	x

(1) Service export-approved State.
x Exported approval granted for wild and cultivated ginseng.
– Export not requested or not granted.
a Export approval only for artificially propaged (cultivated) ginseng.

Conditions on export: All plants and roots must be documented as to State or origin, season of collection, and dry or green (fresh) weight. The State must certify whether roots and plants originated in the State, are wild or cultivated (artificially propagated) specimens, and were legally obtained. Such State certification, a current Federal export document, and an executed dealer's invoice must be presented upon export. The State must maintain a ginseng program, as described by the Service in this rule, and annual ginseng program data for the preceding harvest season should be available to the Office of Management Authority by May 31. Export procedures must be completed as outlined and discussed in this paragraph.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

Dated: July 1, 1988.

[FR Doc. 88-15964 Filed 7-14-88; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 53, No. 136
Friday, July 15, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Land and Resource Management Planning

AGENCY: Forest Service, USDA.

ACTION: Notice of adoption of final policy; request for comment.

SUMMARY: The Forest Service is issuing amendments to Forest Service Manual Chapter 1920—Land and Resources Management Planning and four chapters of the accompanying Forest Service Handbook 1909.12 to clarify the forest planning process, state documentation requirements, describe forest plan implementation and amendment procedures, and define monitoring and evaluation requirements. There is an immediate need to amend the Forest Service Manual and issue the remaining chapters of the Forest Service Handbook in order to facilitate consistent interpretation and application of the direction by Regional and Forest-level personnel. Therefore, the direction is being issued in final form. However, the Forest Service invites public comment on the direction which is set out at the end of this notice. If comments received indicate a need to revise the direction, the Agency will publish proposed revisions and request comment at that time.

DATES: Comments must be received in writing by September 13, 1988.

EFFECTIVE DATE: This policy is effective August 1, 1988. This date allows issuance and receipt of the implementing directives by Forest Service personnel.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to Everett Towle, Director, Land Management Planning Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 447–6697.

SUPPLEMENTARY INFORMATION: Forest Service Manual Chapter 1920 and Forest Service Handbook 1909.12 contain Forest Service policy and procedures to guide Agency personnel in complying with the Forest and Rangeland Renewable Resources Planning Act of 1974 as amended by the National Forest Management Act of 1976, and the implementing regulations found at 36 CFR Part 219. The law and implementing regulations establish the process for land and resource management planning at both the Regional and National Forest level of the Agency. The direction provided in FSM 1920 provides broad planning direction for line and primary staff officers and establishes specific responsibility for perparing regional guides and forest plans and implementing, monitoring, and changing forest plans. Forest Service Handbook 1909.12 provides detailed procedural direction and technical guidance for carrying out the direction contained in the law, regulations, and the Forest Service Manual.

The major changes being issued to FSM 1920 related to: requiring a monitoring plan and responds to identified issues and legal requirements; reserving authority to the Chief to approve the schedule for forest plan revision; and establishing specifications for interim management direction for management of recommended wilderness and wild and scenic river candidates.

The most significant changes being made are for forest plan implementation and amenment. Interim Directive No. 15 to Forest Service Manual 1920 dated Febraury 8, 1988, originally published in the **Federal Register** January 13, 1986 (15 FR 1476) is incorporated in this amendment. The Interim Directive (ID) focuses on forest plan amendment and revision. It reserves authority to the Chief to approve the schedule for forest plan revision and establishes Regional Forester responsibility to review and approve significant amendments to a forest plan. It also clarifies the distinction between significant and nonsignificant amendments of a forest plan. Comments requested and received in early 1986 following publication of the ID have been used in amending applicable parts of Chapter 1920. Twelve letters were received in response to our request for comments: three from the Forest Service; two from the timber industry; two from the oil industry; two from environmental groups; one from an inter-tribal fish commission; one from a State forester; and one from an individual.

Most respondents stated a need to clarify criteria for distinguishing between plan amendment and plan revision. In response, the Agency has expanded to seven the possible reasons for amending a forest plan (FSM 1922.5). Requirements for forest plan revision were unchanged because of the time-certain characteristics of revision. These requirements have been incorporated at FSM 1922.6

Most respondents felt there was a need to determine whether a forest plan amendment is either significant or not significant. We agree and have added direction for making this determination at FSM 1922.5 and 1922.52. Additional factors related to significance of amendments, namely timing, location, size of change, goals, objectives, outputs, and the scope of changed management prescriptions are addressed in the Handbook at section 5.32. In both the Manual and Handbook, the langauge addresses the significance of the change rather than the significance of the amendment to more closely follow the wording in 36 CFR 219.10(f).

Most respondents indicated the need to define procedural steps for amending and revising forest plans. Basic direction for preparing, amending, and revising forest plans is found in the planning regulations at 36 CFR Part 219. Procedures for amending forest plans have been added to sections 5.32 and 5.4 of FSH 1909.12. The process is specific for either a nonsignificant or significant change to the forest plan with a different process and approval required for each. The procedures to revise a forest plan are the same as for preparing a new plan and are found throughout the planning regulations, Chapter 1920 of the Manual, and in the Planning Handbook.

Chapters 1, 2, 7, 8, and 9 of Forest Service Handbook 1909.12 were issued in July 1987. Chapters 3, 4, 5, and 6 are now being added to complete the Handbook. Chapter 3 describes the forest planning process and elaborates on the steps involved in developing a forest land and resource management plan. Chapter 4 provides outlines to be used in preparing and documenting draft and final environmental impact

statements, proposed and final forest plans, and the record of decision. Chapter 5 sets forth the process for forest plan implementation, including the process required to amend the plan. Chapter 6 provides guidance on monitoring levels, monitoring requirements, and the evaluation of monitoring results. Interested persons should review the entire Handbook to fully understand the forest land and resource management planning process. Copies of the Handbook are available for review at all National Forests and Forest Service Regional offices.

The text of the final policy contained in Chapter 1920 of the Forest Service Manual and Chapters 3, 4, 5, and 6 of Forest Service Handbook 1909.12, the Land and Resource Management Planning Handbook, is set forth at the conclusion of this document as it will appear in the Agency's directive system.

If analysis of comments received on the chapters indicates a need to further amend the direction, the Agency will give notice of the proposed revisions in the **Federal Register** and request further comments on the Manual and Handbook.

Date: July 5, 1988.

George M. Leonard,

Associate Chief, Forest Service.

Title 1900—Planning

Chapter 1920—Land and Resource Management Planning

This chapter provides for an integrated land and resource management planning effort at both the regional and local levels. The planning process determines availability of land for resource management, predicts levels of resource use and output, and provides direction for management of a variety of resource management practices.

1920.1—Authority. Planning for the management and use of the National Forest System must conform to the requirements of the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA) as amended by the National Forest Management Act of 1976 (NFMA), implementing regulations found in 36 CFR Part 219, the National Environmental Policy Act (NEPA), and implementing regulations found in 40 CFR Parts 1500–1508. See FSM 1901 for a summary of the Acts, FSM 1013 for the text of 36 CFR Part 219, and FSH 1909.15 for Council on Environmental Quality (CEQ) regulations implementing NEPA.

1920.2—Objectives. The objectives of land and resource management planning are:

1. To determine the capability of a planning area to supply goods and services in an environmentally sound manner.

2. To determine the most cost-efficient method of supplying goods and services from a planning area to maximize net public benefits in response to society's demand.

3. To develop a fully integrated plan for management of the land and resources within a planning area.

4. To display short- and long-term management intent to the public, Federal, State, and local governments, and industrial and other users.

5. To serve as a source of information in developing the RPA Assessment and Program and to provide the means for implementing the National Forest System portion of the Renewable Resources Program (FSM 1910).

1920.3—Policy. The general policy governing Forest Service planning is found in FSM 1903. Specific principles that apply to land and resource management planning are found in 36 CFR 219.1. In addition, the following policies apply to regional and forest planning processes:

1. Prepare and maintain a work plan to guide and manage the planning process.

2. Determine and display the most cost efficient method for meeting the goals and objectives of any alternative developed in the planning process.

3. Obtain the most current data available through use of efficient, compatible, and timely resource inventories. National standards, definitions, and specifications for resource inventories are found in specific Forest Service Handbooks that contain data requirements, resource measurements, and inventory planning and implementation instructions. Coordinate inventories to reduce duplication of data collection at all planning levels.

4. Use FSH 1309.16, the National Activity Structure Handbook, to identify, code, and define outputs and management practices (activities) used in the planning process.

5. Organize planning records and make them available for public review when the draft environmental impact statement is filed.

6. Use the management review system as the primary process to ensure evaluation and documentation of the results of forest plan monitoring are accomplished.

7. Display planning data and information in a manner that can be easily understood by users and the public.

Regional guides and forest plans begun prior to issuance of this direction are exempt from the requirements of this chapter until such time as a significant amendment to the regional guide is prepared or, for forest plans, until the next scheduled revision.

It is the policy of the Chief that all primary direction necessary for development of regional guides and forest plans be contained in this chapter, or supplements or handbooks thereto.

1920.4—Responsibility. General responsibilities for planning are found in 36 CFR Part 219 and in FSM 1904. Additional, specific responsibilities for regional and forest level land and resource management planning and for planning special areas to include potential wilderness designations and wild and scenic river system additions are found in appropriate sections of this chapter.

1920.41—Director, Land Management Planning. The Washington Office Director of Land Management Planning provides staff assistance to the Chief, through the Deputy Chief for the National Forest System, in all matters of regional and forest planning. Additional responsibilities include providing planning assistance to the regions and coordinating regional and forest planning matters at the national level.

1920.5—Definitions. See FSM 1905 for definitions that uniformly apply to land and resource management planning.

1921—REGIONAL PLANNING. The primary product of regional planning is a regional guide. Minimum requirements for regional planning and preparation of regional guides are found in 36 CFR 219.8 and 219.9.

1921.04—Responsibility. Basic responsibilities for development and approval of regional guides are specified in 36 CFR 219.8 (b) and (d).

1921.04a—Chief. The Chief reserves the authority to approve regional guides prior to publication.

1921.04b—Regional Forester. The Regional Forester is responsible for preparing the regional guide, including coordinating preparation of the guide with the Area Director and appropriate Station Directors.

1921.04c—Technical Review Group. A Washington Office Technical Review Group, consisting of a representative from each Deputy Chief area, is responsible for reviewing regional guides. The Director of Land Management Planning chairs the group.

1921.1—Regional Planning Process.

1921.11—Results of Regional Planning. Regional planning results in:

1. An analysis of a region's management situation, including an

assessment of current and future supply capability, demand projections for goods and services, and an assessment of public issues and management concerns within the region. Management concerns include achievement of goals and objectives assigned by the Chief.

2. An identification and analysis of the need to adopt new or change existing standards and guidelines.

3. New or revised planning and/or resource direction to forests.

4. The region's input and response to RPA alternatives.

5. The assignement of RPA Program targets to forests.

Document these analyses and findings in the regional guide (FSM 1921.2).

1921.12—Formulation of Alternatives. Develop a full range of alternative standards and guidelines, including those specified in 36 CFR 219.9(a)(5), in accordance with CEQ regulations 40 CFR Parts 1500–1508 implementing NEPA. The range of alternatives to be examined depends upon the public issues, management concerns, and resource opportunities identified through analysis of the management situation.

1921.13—Estimated Effects of Alternatives. Document the estimated effects for each alternative. If sound data are not available, use and document the best professional judgment available. Environmental consequences of implementing the alternatives are documented in the environmental impact statement accompanying the regional guide.

1921.14—Evaluation of Alternatives. The evaluation of alternatives reflects the net overall physical, biological, economic, and social changes expected with implementation of each alternative. The Regional Forester, with the concurrence of the Chief, shall designate as the preferred alternative the alternative that best addresses major regional issues and management concerns.

1921.2—Regional Guide Content. The regional guide contains those elements specified in 36 CFR 219.9. The guide and environmental impact statement document the analysis required by FSM 1921.11.

1921.3—Review and Approval of Regional Guides.

1921.31—Internal Review. Regional Foresters shall submit draft and final regional guides and accompanying environmental impact statements to the Chief for review by both the Technical Review Group and the Planning Coordination Group prior to Chief's approval for regional publication.

1921.32—External Review. See 36 CFR 219.8(c) for direction on external review of draft and final regional guides and accompanying environmental impact statements.

1921.33—Amendments. See 36 CFR 219.8(f) for the process to amend regional guides. In addition, the Regional Forester:

1. Approves all nonsignificant amendments to a regional guide.

2. Documents approval and determination of nonsignificance in writing.

3. Forwards copies of nonsignificant amendments to interested and affected publics and to all Forest Service offices that have copies of the regional guide on file.

4. Determines, upon completion of each RPA Program update, whether an amendment to the regional guide is necessary when the regional share of the RPA Program, regional conditions, or the demands of the public in the region have changed significantly.

1921.4—Planning Records. Planning records documenting the regional planning process must meet the requirements of 36 CFR 219.8(g).

1922—FOREST PLANNING. Planning for units of the National Forest System involves two levels of decisions. The first is development of a forest plan that provides direction for all resource management programs, practices, uses, and protection measures. The forest plan consists of both forest-wide and area specific standards and guidelines that provide for land uses with anticipated resource outputs under the given set of management constraints. The outputs are not hard and fast decisions within the plan since all conditions required to produce outputs, such as annual budget appropriations, are not controlled by the unit. The second level planning involves the analysis and implementation of management practices designed to achieve the goals and objectives of the forest plan. This level involves site-specific analysis to meet NEPA requirements for decisionmaking.

1922.03—Policy. In addition to complying with the general policies and principles set forth in FSM 1920.3, the forest planning process must:

1. Integrate all resource programs and supporting activities.

2. Base resource inventories on sound sampling designs using common definitions and standards.

3. Use FORPLAN as the primary analysis tool to schedule outputs and activities in the management areas.

4. Use present net value as the indicator of cost efficiency in each alternative (See FSM 1970 and FSH 1909.17).

5. Use economic, social, and other environmental analyses to evaluate and display differences associated with producing alternative levels of the various renewable resources.

6. Evaluate and display the compatibility and conflict between resource values.

7. Document and display the economic and social effects and physical and biological conditions anticipated with implementation of each alternative as well as the differences between alternatives.

8. Systematically construct, analyze, and display the rationale, resource implications, and effects of management standards on present net value and potential production of significant resources.

9. Estimate the goods and services, activities, and investments to be implemented or produced by decade and display these outputs for the identified RPA time periods.

10. Prepare a monitoring plan that is responsive to identified issues and sufficient to meet legal requirements for monitoring soil, water, air, wildlife and fish, vegetation, and other resources.

1922.04—Responsibility. The Chief reserves the authority to approve the schedule for revising individual forest plans.

1922.04a—Regional Forester. In addition to the responsibilities specified in FSM 1904 and 36 CFR 219.10(a), each Regional Forester shall:

1. Coordinate planning efforts between forests within the region and between regions where forests adjoin.

2. Maintain quality control of forest plans by ensuring that forest plans meet the standards of FSM 1922.21.

3. Ensure forest plan monitoring standards are consistent among adjoining units.

4. Review, and approve as appropriate, any amendment that results in a significant change to a forest plan.

5. Propose to the Chief a schedule for revising forest plans.

1922.04b—Forest Supervisor. In addition to the responsibilities specified in FSM 1904 and 36 CFR 219.10(a), each Forest Supervisor shall:

1. Prepare the draft and final forest plan and environmental impact statement to meet the standards in FSM 1922.21 and 1922.31a.

2. Ensure that the interdisciplinary team integrates knowledge of the physical, biological, economic and social sciences, and environmental design arts in the planning process.

3. Conduct planning activities in a manner fully consistent with the National Environmental Policy Act (NEPA), the Council on Environmental Quality implementing regulations, the

Forest Service's environmental policies and procedures described in FSM 1950 and FSH 1909.15, and the requirements of 36 CFR 219.5.

4. Develop and approve amendments that result in a nonsignificant change to the forest plan.

5. Prepare amendments that result in a significant change to the forest plan and recommend them to the Regional Forester for approval.

6. Propose revision of the forest plan to meet the requirements of 36 CFR 219.10(g) and when directed by the Chief.

1922.1—Forest Planning Process. The framework for forest planning is a set of 10 actions described in 36 CFR 219.12 (b) through (k). All the actions are interdependent but some may occur simultaneously. Of necessity, the process is open-ended, dynamic, and interactive.

1922.11—Forest Planning Results. Minimum result required of forest planning are:

1. Identification of resource management issues and concerns and management opportunities.

2. Development of a set of criteria to guide the formulation and evaluation of alternatives (36 CFR 219.12(c)).

3. Analysis of the management situation including all items required in 36 CFR 219.12(e). The analysis determines both the need for and the opportunity to establish or change management direction.

4. Formulation of a set of alternatives that reflects a wide range of options responsive to the significant issues described through benchmark analysis (FSM 1922.12).

5. Evaluation of alternatives and identification of a preferred alternative in accordance with NEPA, CEQ regulations, and Forest Service environmental policies and procedures (FSM 1950 and FSH 1909.15).

6. A forest plan that achieves the 14 principles described in 36 CFR 219.1.

7. A monitoring program to evaluate progress toward achieving the goals, objectives, and standards of the plan and the validity of assumptions and coefficients used to estimate outputs and effects.

1922.12—Benchmark Analysis. Benchmark analysis provides baseline data necessary to formulate and analyze alternatives. Benchmarks estimate a forest's physical, biological, and technical capabilities to produce goods and services. The development of benchmarks is not limited by Forest Service policy or budget, discretionary constraints, or program and staffing requirements. To carry out the requirements of 36 CFR 219.12(e)(1), all forests shall develop and analyze the following benchmarks:

1. Minimum level management.

2. Maximum present net value based on established market price.

3. Maximum present net value including assigned values.

4. Current level management.

5. Maximum resource levels. (Where appropriate, develop individual benchmarks that estimate the maximum capability of the unit to provide significant resource emphasis levels.)

6. Maximum wilderness.

7. Maximum nonwilderness.

Ensure that analysis of wilderness and nonwilderness benchmarks is consistent with wilderness legislation passed for individual States.

1922.13—Formulation of Alternatives. Formulate alternatives to meet the requirements of 36 CFR 219.12(f) and 219.16. Forests must, as a minimum, formulate:

1. An alternative that represents the current program (no action).

2. An alternative that emphasizes market opportunities.

3. An alternative that emphasizes nonmarket opportunities.

4. An alternative that emphasizes meeting RPA Program outputs assigned by the regional guide.

5. Other alternatives necessary to respond to the full range of public issues, management concerns, and resource use and development opportunities.

6. A preferred alternative resulting from the analysis and evaluation required by 36 CFR 219.12 (g) and (h).

1922.14—Estimated Effects of Alternatives. The estimated effects of alternatives provide an objective, scientific, and analytic basis for comparing the alternatives (36 CFR 219.12(g)). The analysis and comparison must be sufficient to permit an informed selection of the preferred alternative as described above.

1922.155—Resource Integration Requirements. Requirements for integrating individual forest resources including wilderness and other special areas into the forest planning process are found in 36 CFR 219.14 through 219.27. Refer to current Service-wide Handbooks for more specific detail on how to incorporate resources. In addition, the forest planning process must:

1. Provide management direction for wilderness, wild and scenic rivers, national recreation areas, national trails, national monuments, national scenic areas, research natural areas, national management emphasis areas, and other identified special, interest areas.

2. Use the recreation opportunity spectrum (ROS) system to determine management of recreation settings, opportunities, and to provide a broad spectrum of experiences in response to user preference.

3. Determine the silvicultural systems and practices to be applied to suitable lands.

4. Provide for management of land suitable for timber production for sawtimber-size crop trees unless exceptions such as pulpwood crop trees are provided for in the forest plan. Also, provide for management of suitable forest land to provide multiple products including, but not limited to, sawlogs, pulpwood, poles, posts, and fuelwood through appropriate silvicultural practices to utilize site productivity.

5. Determine output levels for fuelwood and other nonindustrial wood products that do not require secondary processing where sustained demand is anticipated.

6. In addition to the requirements and conditions for a departure from the base sale schedule of 36 CFR 219.16(a)(3), analyze a departure in at least one alternative presented in detail in the EIS for appropriate forests to include the Clearwater, Idaho Panhandle, Nezperce, Boise, Payette, Lassen, Shasta-Trinity, Six Rivers, and all National Forests in Region 6. Treat the departure alternative as a discrete alternative; however, it must be linked to an alternative with a base sale schedule exhibiting nondeclining flow.

7. Permit a departure sale schedule to temporarily drop below the base timber sale schedule at or beyond the end of the first decade.

8. For those alternatives where the base timber sale schedule in the first decade equals the long-term sustained-yield capacity, evaluate the possibility of departing and subsequently dropping down to, but not below, the base sale schedule at any time in the future.

9. Meet the intent of the culmination of mean annual increment (CMAI) requirement by ensuring the total yield from stands at harvest age is equal to or greater than 95 percent of the volume production corresponding to CMAI. Base CMAI on cubic measure and on the yield from regeneration harvests and any additional yields resulting from intermediate harvests.

10. Determine the annual net growth on lands suitable for timber production for the year 2030 for at least the preferred alternative. If in the preferred alternative, the net growth at 2030 is less than 90% of the long-term sustained-yield capacity for that alternative, describe the additional actions and

costs along with the resulting benefits and environmental effects to achieve this level.

11. Use cubic foot volume and harvest acres, by harvest method, as a dual control in regulating the amount of timber to be offered and sold as specified by the allowable timber sale quantity. Base the control for treatment practices such as site preparation, reforestation, and precommercial thinning on acreage measurements.

12. Develop a timber sale schedule (See 42.7 of FSH 2409.13) and display in the forest plan. The schedule should include timber sales for at least the first 3 to 5 years, and preferably for the 10 year period; the location of specific sales by section, township, and range or other appropriate designations; the area and volume in each sale; and the miles of road to be constructed or reconstructed for each sale.

13. Ensure that the set of management indicator species includes RPA and regional wildlife and fish indicators and represents all significant forest level wildlife and fish diversity and resource production issues, concerns, and opportunities.

14. Ensure that management prescriptions will provide for habitat capability to meet demand for management indicator species and provide access for recreational and commercial uses with minimal disturbance to species use of suitable habitats.

15. Ensure that planned management prevents the need for Federal or State listing of additional plant or animal species.

16. Ensure the plan provides for the kinds, amounts, and distribution of habitat needed for recovery of threatened or endangered species and needed to maintain viable, well-distributed populations of all existing native and desired non-native species.

17. Plan for wildfire protection and prescribed fire use appropriate to efficient attainment of land management goals and objectives. Use the National Fire Management Analysis System (NFMAS) to develop and evaluate potential protection alternatives.

18. Identify the desired landownership pattern and develop guidelines for landownership adjustments to include purchase, donations, exchange, right-of-way acquisition, transfers, interchanges, sales, and boundary adjustments. Guidelines for landownership adjustments should emphasize the following objectives:

a. Acquisition to meet identified resource management needs.

b. Acquisition contributing to consolidation that reduces administrative problems and costs and further enhances public use.

c. Conveyance of land better suited for non-federal ownership.

19. Provide access to energy and mineral resources in the most efficient manner and encourage industry proposals for resource development on National Forest System lands, consistent with the rights that individuals or companies have acquired under the mineral leasing acts and mining laws and consistent with the objective of the alternatives.

20. Identify the specific access requirements and travel management options available to meet the objectives for each management prescription. Describe how access will be provided and how travel will be managed. Include the forest development road system, off-road travel, and air and water access. Integrate considerations of biological, physical, social, and economic factors and environmental design criteria. Link access and travel requirements and opportunities to the full spectrum of resource objectives for each management area and alternative.

21. Plan for the development and maintenance of other physical support facilities required to carry out management objectives.

22. Provide for consideration of transportation and utility corridor designation and utilization as specified in the regional guide (36 CFR 219.9(a)(5)(iv)). Coordinate activities between Regions and with other Federal and State agencies to designate location, alignment, and associated use and occupancy standards for rights-of-way.

23. Determine watershed condition class and include objectives or prescriptions for improving watershed conditions when necessary.

24. Insure municipal watershed requirements (36 CFR 251.9) are incorporated in forest plan standards and guidelines.

25. Identify groundwater aquifers and provide management direction for their protection.

26. Provide management direction to protect air quality related values, including visibility, in Class I Federal areas as required by the Clean Air Act Amendments of 1977 and FSM 2120.

1922.2—Forest Plan Content. 36 CFR 219.11 establishes minimum requirements for content of the forest plan.

1922.21—Standards for Forest Plans. In addition to the other requirements of this chapter and 36 CFR Part 219, forest plans must meet the following standards:

1. Resource information and other data are factual and accurate.

2. Direction is adequate to guide formulation of individual resource programs and schedules needed to implement the plan.

3. Assumptions, analytical approaches, and data are consistently applied within the plan.

4. Interdisciplinary planning and resource coordination are clearly evident.

5. A map delineating management areas and designating future corridors is included.

1922.3—Review and Approval of Forest Plans. 36 CFR 219.10 establishes general requirements for review and approval of forest plans.

1922.31—Internal Review. The Regional Forester reviews forest plans against the standards in section 1922.21.

1922.31a—Standards for Regional Review. Regional review shall ensure that:

1. Each forest plan complies with laws, regulations, policy, the regional guide, and Chief's direction.

2. Each forest plan is reviewed against RPA targets and related costs for the forest and the region as a whole.

3. The range of alternatives in each forest plan is reviewed against maximum resource and economic efficiency capabilities. Ensure the alternatives presented adequately span the identified, feasible range.

4. The analysis and comparative evaluation, documented in the environmental impact statement, is adequate to permit an informed selection of the preferred alternative.

5. The completed forest plan and environmental impact statement have received an interdisciplinary review.

1922.31b—Internal Review Process

1. The Regional Forester approves and forwards the draft proposed plan and environmental impact statement to the Washington Office Land Management Planning (LMP) Staff. The LMP Staff review, coordinated with other Washington Office staffs, focuses on the forum, content, and the ability of these documents to meet national standards for the planning process.

2. Following Washington Office technical review and final approval by the Regional Forester, the forest prints and draft forest plan and accompanying environmental impact statement and makes them available for public review.

3. The Regional Forester reviews a summary of the public comment received on the draft, the forest's response to the comment, and the proposed final forest plan and final environmental impact statement.

4. The Chief requires Washington Office review and approval prior to

printing of all final plans and their accompanying environmental impact statement, if the plan makes recommendations that ultimately will require Congressional action such as additions to or deletions from the National Wilderness Preservation System, National Trails, National Recreation Areas, studies or changes to the National Wild and Scenic River System, and proposed adjustments in National Forest boundaries. Otherwise, upon approval of final forest plans by the Regional Forester, the forest may print and release the final documents unless:

a. The Region has specifically requested additional Washington Office review.

b. The Chief has specified additional Washington Office review because of the degree or intensity of controversy, the extent of changes in the preferred or any other alternative, or if other circumstances warrant.

1922.32—External Review. External reviews during the forest planning process require public participation and coordination with other public planning efforts (36 CFR 219.6, 219.7, 219.10, and 40 CFR 1502.9 and 1503). Plan public participation at the earliest stages of the process. Obtain public participation in the identification of public issues during the formal scoping process and during review of draft documents. Prepare a public participation plan and make this plan a part of the planning records along with documented results of participation activities. Document results of coordination with other Federal agencies, State and local governments, and Indian tribes.

1922.4—Forest Plan Implementation. Detailed instructions for implementation of forest plans are found in Chapter 5 of the Land and Resource Management Planning Handbook, FSH 1909.12.

1922.41—Analysis and Evaluation. Conduct analysis and evaluation to establish a rational basis for making decisions on proposed management practices or actions. The analysis must provide the responsible official with relevant information necessary to make a decision to select or reject proposed management practices or actions. The information must be sufficient to establish a determination of consistency, comply with NEPA requirements, document findings, and provide a basis for selecting actions to implement. The following provides specific requirements for analysis and evaluation:

1. Confirm and document that the proposed management decisions are consistent with the management direction in the forest plan. Management practices should be consistent with the forest plan before they can be selected for implementation. If an action cannot be changed to be consistent, the action must be rejected or the forest plan must be amended as directed in FSM 1922.5. Consistency determinations, including specific required findings, are described in Chapter 5.3 of FSH 1909.12.

2. Normally, base economic analysis of proposed management practices on cost effectiveness (least cost analysis). Use cost-efficiency analysis (FSM 1970) where costs or consequences are in question or where cost-efficiency was not adequately evaluated in the forest plan. Select actions that reduce the overall cost while meeting forest plan direction; and

3. Conduct analysis of management practices and alternatives in a manner that allows evaluation or the interconnected actions necesssary to achieve the integrated resource objectives envisioned by the forest plan.

4. Conduct environmental analysis as necessary to determine direct, indirect, and cumulative effects of various actions proposed within a given area. Analyze cumulative effects when thresholds such as the hydrologic capacity of a watershed, visual quality standards, or wildlife or fisheries habitat may be exceeded;

5. Complete environmental analysis before deciding upon an action (FSM 1952 and FSH 1909.15, Chapter 20);

1922.42—Selected Management Practices. Upon completion of analysis, the responsible official decides which management practices to select to achieve forest plan direction. Develop an implementation schedule for these selected management practices. Management practices not identified in the implementation schedule may be considered, but the forest plan may require amendment.

1922.5—Amendment. The need to amend a forest plan may arise from several sources, including the following:

1. Recommendations of the Forest interdisciplinary team based on findings that result from monitoring and evaluating implementation of the forest plan (36 CFR 219.12(k) and FSM 1922.7);

2. Findings that existing or proposed permits, contracts, cooperative agreements, and other instruments authorizing occupancy and use are not consistent with the forest plan but should be approved (36 CFR 219.10(e));

3. Changes in proposed implementation schedules (36 CFR 219.10(e)) necessary to reflect differences between funding levels contemplated in the forest plan and funds actually appropriated;

4. Changes necessitated by resolution of administrative appeals;

5. Changes to correct planning errors;

6. Changes necessitated by changed physical, social, or economic conditions; and

7. Implementation of management practices outside the scope of the forest plan.

Upon receiving advice of the interdisciplinary team that the plan requires change, the responsible official shall:

1. Determine whether proposed changes to a forest plan are significant or not significant in accordance with the requirements of 36 CFR 219.10 (e) and (f), 36 CFR 219.12(k), and sections 1922.51 and 1922.52 that follow;

2. Document the determination of whether the change is significant or not significant in a decision document; and

3. Provide appropriate public notification of the decision prior to implementing the changes.

Findings of the responsible official regarding the consistency of management practices and actions with the forest plan and the determination of the significance of an amendment are an integral part of decisions. As such, they are appealable.

1922.51—Changes to the Forest Plan That Are Not Significant. Changes to the forest plan that are not significant can result from:

1. Actions that do not significantly alter the multiple-use goals and objectives for long-term land and resource management;

2. Adjustments of management area boundaries or management prescriptions resulting from further on-site analysis when the adjustments do not cause significant changes in the multiple-use goals and objectives for long-term land and resource management; and

3. Minor changes in standards and guidelines.

4. Opportunities for additional management practices that will contribute to achievement of the management prescription.

The Forest Supervisor must prepare an amendment to the forest plan to accommodate a change determined not to be significant. Appropriate public notification is required prior to implementation of the amendment.

1922.52—Changes to the Forest Plan That Are Significant. The following examples are indicative of circumstances that may cause a significant change to a forest plan:

1. Changes that would significantly alter the long-term relationship between levels of multiple-use goods and

services originally projected (36 CFR 219.10(e)); and

2. Changes that may have an important effect on the entire forest plan or affect land and resources throughout a large portion of the planning area during the planning period.

When a significant change needs to be made to the forest plan, the Forest Supervisor must prepare an amendment.

Documentation of a significant change, including the necessary analysis and evaluation should focus on the issues that have triggered the need for the change. In developing and obtaining approval of the amendment for significant change to the forest plan, follow the same procedures as are required for developing and approving the forest plan (36 CFR 219.10(f) and 36 CFR 219.12).

1922.6—Revision. The National Forest Management Act requires revision of forest plans at least every 15 years; however, a plan may be revised sooner if physical conditions or demands on the land and resources have changed sufficiently to affect overall goals or uses for the entire forest. To revise a forest plan, follow procedures set forth in 36 CFR 219.12 after obtaining approval of the Chief to schedule a revision.

1922.7—Monitoring and Evaluation. Conduct monitoring of the forest land and resource management plan and of the individual management practices, to determine how well objectives have been met and how closely management standards and guidelines have been applied. Monitoring and evaluation requirements for the forest plan are found at 36 CFR 219.12(k). See Chapter 6, FSH 1909.12 for an explanation of monitoring and evaluation of forest plans.

1. Monitoring of the forest plan is conducted at three levels:

a. Implementation Monitoring. Implementation monitoring determines if plans, prescriptions, projects, and activities are implemented as designed and in compliance with forest plan objectives, requirements, and standards and guidelines. Evaluation of implementation monitoring may require adjustment of prescriptions and targets or changes in plan or project administration.

b. Effectiveness Monitoring. Effectiveness monitoring determines if plans, prescriptions, projects, and activities are effective in meeting management direction, objectives, and the standards and guidelines. Evaluation of the results of effectiveness monitoring is used to adjust forest plan objectives, targets, prescriptions, standards and guidelines, conservation practices, mitigation measures, and other best management practices and could result in change to or amendment of the forest plan.

c. Validating Monitoring. Validation monitoring is designed to ascertain whether the initial assumptions and coefficients used in development of the forest plan are correct or if there is a better way to meet forest planning regulations, policies, goals, and objectives. Evaluation of this type of monitoring can result in amendment of forest plans and may be used to recommend changes in laws, regulations, and policies that affect both the plan and project implementation.

1922.71—Monitoring Requirements.

1. Focus monitoring on those activities that affect significant management systems such as total silvicultural systems and other monitoring requirements of the regional guide; those activities that are responsive to stated issues, concerns, and management opportunities; and those activities that affect major components of the environment.

2. Coordinate monitoring efforts with resource inventory needs to reduce duplication.

3. Monitor to ensure that:

a. The forest plan complies with applicable laws and regulations.

b. Cumulative effects of project implementation do not exceed standards or thresholds stated in the forest plan.

c. Planned mitigation actions are implemented and maintained as designed.

d. Local, state, and federal air, water, noise, and other legal requirements are met.

1923—Wilderness Evaluation. Consideration of wilderness suitability is inherent in land and resource management planning. Although the President and the Secretary may recommend that certain areas be designated wilderness, Congress reserves the authority to designate areas as wilderness. In addition, the Congess may direct the study of specific areas and provide other guidance on wilderness evaluations through specific wilderness legislation. Planning for potential wilderness designation may occur in development of a forest plan or may require a separate study.

1923.01—Authority. Specific authority for the study and designation of wilderness is contained in the Wilderness Act of September 3, 1964, and the Eastern Wilderness Act of January 3, 1975.

1923.03—Policy.

1. Specific policies governing identification and evaluation of roadless areas in the forest planning process are found in 36 CFR 219.17 and Chapter 7 of FSH 1909.12.

2. A roadless area being evaluated and ultimately recommended for wilderness or wilderness study is not available for any use or activity that my reduce the area's wilderness potential. Activities currently permitted may continue, pending designation, if the activities do not compromise wilderness values of the roadless area.

1923.04—Responsibility.

1923.04a—Chief. The Chief reserves authority to:

1. Review the final environmental impact statement when wilderness is recommended as a part of the forest planning process.

2. Recommend wilderness proposals to the Secretary.

1923.04b—Regional Forester. The Regional Forester is assigned responsibility to:

1. Review, recommend approval of, and forward to the Chief, final wilderness study reports for all Congressionally mandated wilderness studies and all other studies that recommend that wilderness be designated or that recommend Congressional wilderness study designation for areas east of the 100th meridian.

2. Approve final management direction for designated wildeness as provided in 36 CFR 219.18.

1923.04c—Forest Supervisor. The Forest Supervisor shall conduct necessary wilderness studies and prepare a study report/environmental impact statement, either as a part of the forest plan or as a separate study.

1923.1—Review and Approval. In addition to the requirements of this section, internal review and approval of wilderness recommendations must meet the same requirements as for forest plans (FSM 1922.3).

1923.11—Proposals Resulting From Forest Planning. Prior to printing the forest plan's final environmental impact statement, the Regional Forester must notify the Chief by letter of the tentative recommendations on wilderness study areas or other roadless areas evaluated during forest planning. The environmental impact statement accompanying the forest plan must be structured in such a way as to permit "lifting" the wilderness recommendation and evaluation from the parent document to become a legislative EIS. The wilderness document must meet NEPA requirements and stand on its own.

Forest plans and final environmental impact statements that make recommendations for wilderness

designation must contain the following statement:

This recommendation is a preliminary administrative recommendation that will receive further review and possible modification by the Chief of the Forest Service, the Secretary of Agriculture, and the President of the United States. The Congress has reserved the authority to make final decisions on wilderness designation. Therefore, this wilderness recommendation is not appealable under the agency's administrative appeal procedures.

1923.12—Proposals Resulting From Special Wilderness Studies Not Incorporated in Forest Plans. The Regional Forester shall transmit the combined study document and draft environmental impact statement to the Chief for filing with the Environmental Protection Agency. Special wilderness studies follow essentially the same steps through the public review and comment period on the environmental impact statement as studies conducted as part of forest planning. Exceptions are made to meet the requirements of legislative language developed by the Congress.

1924—Wild and Scenic River Evaluation. Consideration of potential wild and scenic rivers is an inherent part of the ongoing land and resource management planning process. A river study assesses the eligibility of a river for designation as a unit of the National Wild and Scenic River System and evaluates the potential physical, biological, economic, and social effects of adding the river to the National System. See Chapter 8 of FSH 1909.12 for eligibility criteria and the river study process. The studies form the basis for reports and recommendations to the President and Congress and for legislative action regarding a river's designation.

1924.01—Authority. The principle authority for study and designation of wild and scenic rivers is the Wild and Scenic Rivers Act of October 2, 1968, as amended. The revised USDA-USDI Guidelines for Eligibility, Classification, and Management of River Areas dated September 7, 1982, supplement the Act and provide more specific direction. In addition, the Nationwide Rivers Inventory published in January, 1982, by the National Park Service identifies some of the potential wild and scenic rivers.

1924.03—Policy.

1. Complete river studies as expeditiously as possible. Give priority to studying those rivers most threatened by adverse developments and use and those bordered by the greatest proportion of private lands.

2. Conduct studies in close cooperation with affected Federal agencies and with agencies of the affected State(s) and its political subdivision. The studies include a determination of possible State participation in the preservation and administration of the river if it is added to the System.

3. Rivers identified for study are managed to maintain their outstanding values. Refer to the USDA-USDI Guidelines for Eligibility, Classification, and Management of River Areas dated September 7, 1982, for specific management guidance for each of the river classifications and Chapter 8 of FSH 1909.12 for additional direction.

1924.04—Responsibility. The Secretary of Agriculture has designated the Forest Service as the lead coordinating agency for the Department in the studies of rivers that involve National Forest System lands.

1924.04a—Chief. The Chief reserves the authority to:

1. Approving the draft environmental impact statement/study report for Congressionally designated study rivers and to authorize submission of the report for interdepartmental and intradepartmental review of the proposal as required in section 4(b) of the Wild and Scenic Rivers Act.

2. Approve the final environmental impact statement/study report for all river studies and to submit a recommendation for the Secretary of Agriculture's consideration.

1924.04b—Deputy Chief for National Forest System. The Deputy Chief is responsible for:

1. Approve designation of the lead region when a Congressionally designated study river involves more than one region.

2. Coordinating the Department's review of other agency and State wild and scenic river proposals that are submitted pursuant to section 2(a)(ii) of the Wild and Scenic Rivers Act.

1924.04c—Regional Forester. The Regional Forester:

1. Designates the lead forest when a study river involves more than one National Forest.

2. Invites the concerned State(s) to participate jointly in the study of potential wild and scenic rivers where USDA is the lead agency.

3. Approves management direction for noncongressionally designated study rivers that are found eligible during land management planning but await completion of a suitability analysis.

1924.04d—Forest Supervisor. The Forest Supervisor:

1. Prepares a plan of study for assigned study rivers. The study plan provides for the completion of all tasks within the time period specified in the legislation or by other policy.

2. Arranges for public meetings to inform the public of the purposes and objectives of a study and to obtain public views and concerns that should be addressed during a study.

3. Assigns an interdisciplinary team to conduct the study. The team shall possess skills commensurate with the resource values associated with the river and adjacent lands.

4. Prepares the necessary environmental impact statements/study reports either as part of the forest land management planning process or as required for a Congressionally designated study.

5. Ensures that the forest plan contains management direction for rivers or segments of rivers that have been recommended for inclusion in the National Wild and Scenic River System.

1924.1—Report. The Forest Supervisor must prepare a detailed study report to be submitted to the Congress for all Congressionally designated study rivers and those rivers identified through the forest planning process as suitable for wild and scenic river designation. The report describes the river's eligibility and suitability for designation as a component of the National Wild and Scenic Rivers System.

1924.2—Review and Approval. FSM 1924.04 prescribes the review and approval responsibilities for recommending Congressionally designated study rivers. Review and approval of rivers identified or studied for designation in the course of the forest planning process shall follow the process set forth in FSM 1922.3.

Land and Resource Management Planning Handbook

Chapter 3—Forest Planning Process

Contents

3.1 IDENTIFICATION OF PURPOSE AND NEED
3.2 PREPARATION OF PLANNING CRITERIA
3.21 Management Requirements
33.3 INVENTORY DATA AND INFORMATION COLLECTION
3.31 Capability, Analysis, and Management Areas
3.32 Data and FORPLAN Coefficients
3.33 Analytical Tools
3.4 ANALYSIS OF THE MANAGEMENT SITUATION
3.41 Required Analysis
3.41a Description of Current Management Situation
3.41b Benchmark Analysis
3.41c Resource Demand Projections
3.41d Analytical Conclusions
3.42 Benchmark Requirements

3.42a Minimum Level Management Benchmark
3.42b Maximum Present Net Value with Assigned Values Benchmark
3.42c Maximum Present Net Value with Market Values Only Benchmark
3.42d Current Level Benchmark
3.42e Maximum Timber Benchmark
3.42f Maximum Range Benchmark
3.42g Maximum Wilderness Benchmark
3.42h Maximum Nonwilderness Benchmark
3.42i Maximum Present Net Value with Assigned Values—Departure Benchmark
3.43 Management Prescriptions
3.5 FORMULATION OF ALTERNATIVES
3.51 Guiding Principles
3.52 Current Direction (No Action) Alternative
3.53 Emphasis on Market Opportunities Alternatives
3.54 Emphasis on Nonmarket (Amenity) Opportunities Alternative
3.55 Emphasis on Meeting Assigned Renewable Resources Program Output Alternative
3.56 Wilderness Emphasis with Capital Investment Emphasis on Remaining Lands Alternative
3.57 Other Alternatives
3.58 Constraints on Alternatives
3.6 ESTIMATED EFFECTS OF ALTERNATIVES
3.7 EVALUATION OF ALTERNATIVES AND PREFERRED ALTERNATIVE RECOMMENDATION
3.8 PLAN APPROVAL

This chapter sets forth the minimum procedures for meeting forest planning requirements in 36 CFR 219.12 and FSM 1922. Subsequent chapters address documentation requirements, procedural requirements for forest plan implementation and amendment, and forest plan monitoring and evaluation.

3.1—IDENTIFICATION OF PURPOSE AND NEED. Forest planning is based on public issues, management concerns, and opportunities for resource management. The issue, concerns, and opportunities designated for consideration in the planning process are used to develop the goals and objectives that give purpose to the land and resource management plan. The minimum requirements for documenting issues, concerns, and opportunities in the planning records are as follows:

1. Keep a dated copy of the initial list of issues and concerns from both internal and external sources.

2. Keep a dated copy of criteria used to screen issues, concerns, and opportunities.

3. Document the disposition of each issue to indicate how each was evaluated in the screening process.

4. Describe development of goals and objectives to be used to resolve issues and concerns.

5. Document the preliminary selection of issues and concerns on which the forest plan is to concentrate. Describe any conflict involved or the competitive nature of the issue or concern and the goals or objectives for resolution of the issue or concern.

3.2—PREPARATION OF PLANNING CRITERIA. The purpose of preparing planning criteria is to guide analysis during the planning process. In addition to the requirements of 36 CFR 219.12(c), the following criteria should be applied:

1. Alternatives are technically possible to implement.

2. Alternatives meet management requirements or standards.

3. Various levels of multiple use objectives and outputs are achieved.

3.21—Management Requirements. Minimum specific management requirements are requirements of law and regulation that must be met while implementing management prescriptions for resource use. Management requirements are specified in 36 CFR 219.27. Attainment of management requirements should impose the least possible restrictions on the achievement of multiple use goals and objectives.

Management requirements are primarily achieved through application of standards and guidelines. The standards and guidelines define physical and biological conditions that are consistent with the management requirements and specify how the conditions are to be met.

Estimate opportunity costs of the sets of standards and guidelines that are proposed to meet management requirements during benchmark analysis. If these standards and guidelines significantly limit achievement of multiple use goals and objectives, consider alternative standards and guidelines that may be less restrictive. Where alternative standards and guidelines are available, the analysis of the alternatives and the selection and display of final standards and guidelines is specified in section 4.13(3) of this handbook.

3.3—INVENTORY DATA AND INFORMATION COLLECTION. Various data are necessary both for planning for and managing the National Forest. Collect data for the forest as a whole and specific to parts of the forest, as appropriate. Coordinate data collection to meet all resource data needs. Document as part of the planning records the delineation of capability, analysis, and management areas; the criteria used to delineate analysis and management area; data sources and coefficients used in the analysis process; the results of monitoring the previous land and resource management plan; and other analytical tools used in planning.

3.31—Capability, Analysis, and Management Areas. Delineation of capability, analysis, and management areas forms the basis for analysis in the forest planning process.

1. A capability area is an identifiable, contiguous area of land that, because of its characteristics, responds to management prescriptions relatively the same throughout its area. Retain maps delineating capability areas as part of the planning records.

2. An analysis area consists of one or more capability areas grouped together for the purpose of conducting analysis.

3. A management area consists of one or more capability or analysis areas or portions thereof. It is an area with specific management goals, objectives, standards, and guidelines that comprise the management prescription for the land area.

3.32—Data and FORPLAN Coefficients

1. The following documentation requirements apply to all resource, economic, social, and budgetary data collected or generated in the planning process. Note that the requirements apply to both qualitative and quantitative data that are to be maintained as part of the planning records.

a. Record the source or method of data collection or generation. For example, if water quality data is collected by sampling certain streams, describe the sampling procedure. Also, describe or cite the timber inventory and yield projection procedure. List and describe simulation models used to generate certain coefficients and model assumptions and results. Also, state whether the data are based on experience, published documents, and/or professional judgment. If the data are based on published information, cite the source.

b. Describe the accuracy and precision of the data.

c. List assumptions associated with the data collection or generation processes.

d. Set forth the methods or basis for projecting future yields or results.

2. Describe the structure and components of any data base management system used. Retain a copy of the final data base used during development of the forest plan until the plan is revised.

3. The FORPLAN Version 2 data only matrix print-out (FORPLAN Users Guide) meets the requirement to document the coefficients associated with each analysis area and prescription. Clearly describe the process used to develop coefficients, the

individuals responsible for coefficient development, and the assumptions and agreements reached in their development and define any codes or abbreviations used.

3.33—Analytical Tools. Various analytical models such as FORPLAN, IMPLAN, simulation models, fire analysis models, transportation analysis models, cost-benefit tools, and fish and wildlife habitat capability models may have been used during the planning process. If so, record in the planning records the:

1. Purpose of the model and the role it played in the planning process.
2. Assumptions of the model.
3. Details needed to understand the implications of using the model or of interpreting its results.
4. Source, version, author, date, and any literature describing the particular model or tool.

3.4—ANALYSIS OF THE MANAGEMENT SITUATION. The analysis of the management situation converts inventory data into management information to determine if it is necessary to change or establish management direction. The analysis provides the basis for a range of alternative ways to solve the management problem and for development of management prescriptions to provide management direction. Conduct benchmark analysis to define the range of the alternatives.

3.41—*Required Analysis.* Conduct an analysis of the current management situation to determine whether there is a need for new management direction. Sections 3.41a through 3.41d specify minimum standards for documenting this analysis.

3.41a—*Description of Current Management Situation.* Describe the current management situation in the following manner:

1. Summarize existing management direction to include current goals and objectives, standards and guidelines, and land classifications.
2. Refer to existing management plans.
3. Summarize actual current outputs and activities, including road system development and operating strategy.
4. Describe projected outputs and activities if current management direction were to continue into the future. If different than projections shown in the forest plan, display forest plan projections and explain the differences.
5. Describe the expected future condition of the forest if current management direction were to continue.
6. Describe any known problems with the existing direction or situation.
7. Keep a copy of the FORPLAN results of current management (no action alternative) in the planning records.

3.41b—Benchmark Analysis. The minimum requirements of benchmark analysis are set forth in FSM 1922.12. Document the benchmark analysis as follows:

1. Describe the formulation of the benchmarks; include purpose, objectives, assumptions, constraints, and FORPLAN input.
2. Maintain a copy of the final FORPLAN analysis of each benchmark.
3. Describe the outcome of benchmark analysis to indicate what was learned about forest capabilities and limitations, interaction among resources, and the forest's ability to respond to known issues or concerns.

s3.41c—Resource Demand Projections. In documenting resource demand projections, include:

1. The source of information and methodology for generating demand projections.
2. The assumptions pertinent to trends in population size, growth, and composition; trends in employment; identification of areas of population growth and decline; a description of the structure of the local and regional economy; and trends in resource utilization and consumption.
3. An evaluation of the sensitivity of projected demands to changing conditions.
4. Identification of the market area.
5. A discussion of price-quantity relationships—past, current, and future—when the data are available.
6. The relationship of total demand to projected supply from other, adjacent National Forests and from non-National Forest System lands.
7. The projected demand.

3.41d—Analytical Conclusions. Document the conclusions drawn from the analysis of the current situation, the benchmarks, and the demand projections. Include:

1. An assessment of the forest's capability to supply (produce) goods and services, including adequacy of the current transportation system.
2. An assessment of the demand for goods and services from the forest.
3. The need and opportunities for the forest to establish or change management direction.
4. An assessment of the ability to resolve issues and concerns through the planning process.
5. An assessment and display of the range within which it is possible to formulate alternatives.

3.42—Benchmark Requirements. Benchmarks approximate maximum economic and biological resource production opportunities, are useful in evaluating the compatibilities and conflicts between individual resource objectives, and help define the range within which integrated alternatives can be developed. The following principles govern benchmark development:

1. Benchmarks display a forest's physical, biological, economic, and technical capabilities. They are not to be limited by Forest Service policy or budget, discretionary constraints, or program and staffing requirements. It must be physically and technically feasible to implement benchmark management situations, but it may not be prudent to do so.
2. Benchmarks provide an analytical base for developing alternatives and provide a reference point for comparison among alternatives.
3. The purpose of benchmarks is not only to approximate the resource potentials but also to establish the degree of change from current management that can occur.
4. Each benchmark:

a. Must be consistent with the management requirements and must indicate whether they are met.

b. Must comply with a base sale schedule (nondeclining yield) of timber harvest and permit scheduling of the harvest of even-aged stands generally at or beyond culmination of mean annual increment of growth. Timber-significant forests (FSM 1922.15(6)) shall evaluate relaxation of both the base sale schedule and harvest generally at or beyond culmination of mean annual increment (FSH 1909.13).

c. Must not be constrained by forest budgets.

d. Must use maximum present net value (market values) as the objective function in FORPLAN except as noted below for the resource specific benchmarks.

3.42a—Minimum Level Management Benchmark. This benchmark represents the minimum level of management needed to maintain and protect the unit as part of the National Forest System. Think of minimum level as the level of management necessary to meet the background outputs and fixed costs associated with maintaining the National Forest in Federal ownership. Because it is only an accounting analysis, ignore the phase-in period that would be necessary if the minimum level were actually implemented.

1. *Specifications:*

a. The objective function is to minimize cost for the planning horizon.

b. The management objectives are:

(1) Protect the life, health, and safety of incidental users;

(2) Prevent environmental damage to the land or resources of adjoining lands of other ownerships or downstream users;

(3) Conserve soil and water resources;

(4) Prevent significant or permanent impairment of the productivity of the land; and

(5) Administer unavoidable non-Forest Service special uses and mineral leases, licenses, permits, contracts, and operating plans.

c. Incidental outputs are permissable but there is to be no management that would produce timber, range, and developed recreation outputs.

d. Vegetation is to follow natural succession.

e. Maintenance is only for those facilities needed to support the basic ownership activities. Allow all other facilities to deteriorate. Greatly reduce the fire organization.

f. Dispersed recreation use that cannot be discouraged or controlled is to occur.

g. Cultural resource management is to be at a minimum level and is primarily for identification and protection of the resources in conjunction with any proposed ground disturbing activities.

3.42b—Maximum Present Net Value with Assigned Values Benchmark. The purpose of establishing this benchmark is to estimate the mix of resource uses and a schedule of outputs and costs that would maximize the present net value of outputs assigned a monetary value. Base dollar values on actual or simulated market prices (willingness to pay) for timber, recreation, range, water, minerals, and wildlife and fish, as appropriate for the forest.

Minimum specific management requirements and nondeclining yield requirements apply to this benchmark.

3.42c—Maximum Present Net Value with Market Values Only Benchmark. The purpose of establishing this benchmark is to estimate the mix of resource uses and determine a schedule of outputs and costs that would maximize the present net value of those outputs that have an established market price. Base dollar values on actual market prices for timber, range, commercially utilized fish, minerals, and developed recreation.

Minimum specific management requirements and nondeclining yield requirements also apply to this benchmark.

Run the solution through the FORPLAN report writer to price out assigned market values. Use the PNV-COST values from the second report to make comparisons.

3.42d—Current Level Benchmark. This benchmark provides for management using the current plan, adjusted to incorporate changes necessary to meet current management direction. The benchmark estimates the capability of the planning area to provide for a wide range of goods, services, and other uses from the present land allocation. This benchmark meets all requirements specified in the regulations (36 CFR, Part 219).

3.42e—Maximum Timber Benchmark. All forests with lands identified as tentatively suitable for timber production should establish this benchmark to define the maximum timber output possible for the first 5 decades of the plan under current policies and minimum specific management requirements.

To establish this benchmark:

1. Perform three FORPLAN model runs. The first run uses an objective function that maximizes timber values for the first decade.

2. Perform the second run (called a "rollover") to ensure that the maximum amount of timber is produced for fifteen decades.

3. Perform the third run, constrained by the results of the first two, to maximum PNV for fifteen decades.

4. Apply nondeclining yield requirement.

5. Apply management requirements.

3.42f—Maximum Range Benchmark. The purpose of this benchmark is to define the maximum capability of the forest to provide commercial livestock grazing, subject to minimum management requirements.

For this benchmark:

1. Perform two model runs. The first must maximize livestock forage production for 5 periods.

2. Perform the second run to ensure that the maximum amount of forage is produced in an economically efficient manner by using the maximum production specified in the first run as right-hand-site range constraint and by rerunning FORPLAN with a maximum present net value objective function.

3. Apply management requirements.

3.42g—Maximum Wilderness Benchmark. The purpose of this benchmark is to evaluate the impacts of a maximum wilderness recommendation.

The specifications for this benchmark are:

1. The objective function maximizes present net value for the planning horizon.

2. All roadless and wilderness study areas have wilderness prescriptions. Do not adjust boundaries; use the largest, unroaded area (see inventory criteria at section 7.11).

3. Apply management requirements.

4. Apply nondeclining yield requirement.

3.42h—Maximum Nonwilderness Benchmark. The purpose of this benchmark is to evaluate the impacts on no additional wilderness designations.

The specifications for this benchmark are:

1. The objective function maximizes present net value for the planning horizon.

2. All roadless and wilderness study areas have nonwilderness prescriptions. Existing wildernesses remain designated.

3. Apply management requirements.

4. Apply nondeclining yield requirement.

3.42i—Maximum Present Net Value with Assigned Values—Departure Benchmark. The purpose of establishing this benchmark is to estimate the mix of resource uses and outputs as identified in section 3.42b without the constraints of meeting nondeclining yield requirements. This benchmark is developed only on timber significant forests as described in FSM 1922.15(6). The only specification for this benchmark is that minimum specific management requirements apply.

3.43—Management Prescriptions. Document management prescriptions available for selection as follows:

1. Describe the process used to develop prescriptions, including steps taken to ensure all feasible prescriptions were considered. Show how the process identified a reasonable range of prescription and included the most economically efficient prescriptions.

2. List the assumptions made while developing prescriptions and the basis for those assumptions.

3. Identify practices (activities), outputs, and costs associated with each prescription.

4. Describe the objectives of each prescription.

5. List the critieria used to determine which prescriptions are subitable or possible for each analysis area. These criteria include, but are not limited to:

a. A definition of resource capability; for example, only forest types that can be regenerated within 5 years following final harvest removal cutting are suitable for timber production.

b. Qualifying/disqualifying attributes; for example, any prescription requiring construction of roads is not suitable within existing wildernesses.

c. A definition of lands not available for timber, mineral entry, or other resource management; for example,

designated wildernesses are not available for timber production.

d. A definition of access strategy; for example, low standard, low-density roads controlled by gates or regulation to protect wildlife habitat.

e. A list of criteria for compatibility of management emphasis for each analysis area.

6. Describe all suitable prescriptions by analysis area. The FORPLAN matrix files can document this.

3.5—FORMULATION OF ALTERNATIVES. Formulate a broad range of reasonable alternatives that address major public issues, management concerns, and resource use and development opportunities. See FSM 1922.13 for the minimum requirements for formulating alternatives. Document the process used to formulate alternatives in the planning records. For each alternative analyzed, document:

1. The overall management approach and resource emphasis.

2. Management goals and objectives and how they relate and respond to identified issues, concerns, and opportunities.

3. Standards and guidelines necessary to achieve the alternative.

4. The relationship of the alternative to benchmarks and how it falls within the range of management opportunities defined by the benchmarks.

5. The FORPLAN and other constraints imposed. Include the rationale for constraints, the constraint analysis (that is, an assessment of the costs of the constraint), and an evaluation indicating that the constraints were the most cost efficient means to achieve the objectives of each alternative.

3.51—Guiding Principles. The following principles govern development of alternatives:

1. In any alternative, ensure that a forest is not proposing to produce more of an output than its maximum capability.

2. Management requirements set forth in 36 CFR 219.27 must be met.

3. Alternatives must use the same dollar values and estimated levels of economic demands for priced outputs as those used in the benchmarks.

4. Ensure the alternatives, through their range, respond to stated issues and concerns. Explain that each alternative responds differently to the issues and concerns, based upon the overall goal of the alternative.

5. Always examine departures from the base sale schedule for the preferred alternative and for any other alternative that satisfies at least one of the departure conditions (36 CFR 219.16(a)(3) and section 34 of FSH 2409.13).

6. In examining departures, those forests designated by FSM 1922.15(6) to conduct additional analysis must explore the possibility of using rotation lengths less than indicated by culmination of mean annual increment (CMAI). Other forests shall conduct such departure analyses as necessary to address public issues, management concerns, or resource use and development opportunities.

7. With two exceptions, do not apply budget constraints to any alternative considered in detail if the constraint results in foregoing economically efficient commodity and/or noncommodity production opportunities. The first exception is a budget constraint that may be applied to the current direction/no action alternative. The second exception is that budget constraints may be applied to alternatives specifically designed to define the implications of that budget constraint, provided that the environmental impact statement:

a. Explicitly states the purpose of the alternative.

b. Displays the specific implications of imposing the budget constraint.

c. Does not reduce the obligation to discuss a full range of reasonable alternatives that reflect the budgetary authority granted in recent appropriations and that reflect probable future funding levels.

3.52—Current Direction (No Action) Alternative. Each plan must identify the current direction (no action) alternative.

1. *Purpose.* The purpose of the no action alternative is to reflect the existing levels of outputs and to estimate the expected outputs and services that would be possible to provide in the future if current allocations, direction, policies, and practices were to continue.

2. *Specifications.*

a. Use land classification assignments that exist is current plans.

b. Meet management requirements and indicate how current direction may have changed in response to better timber yield data.

c. Reflect the Administration's current recommendations for wilderness, wilderness study, and wild and scenic river designation. Assume that other roadless areas and wild and scenic rivers would be open to the full range of multiple-use prescriptions.

3.53—Emphasis of Market Opportunities Alternative. The purpose of this required alternative is to emphasize market resources, such as timber, range, minerals, commerical fish, and developed recreation. Management for other resources would be economically efficient, environmentally feasible, and consistent with emphasis on market outputs.

3.54—*Emphasis on Nonmarket (Amenity) Opportunities Alternative.* The purpose of this required alternative is to emphasize nonmarket resources, such as fish and wildlife, dispersed recreation, and wilderness, with market outputs of economically efficient and environmentally feasible levels.

3.55—Emphasis on Meeting Assigned Renewable Resource Program Outputs Alternative. This required alternative determines how best to implement the most current RPA Program as distributed to a forest through the regional guide. The assigned program is not to be a constraint in the consideration of other alternatives or in selection of the preferred alternative.

3.56—Wilderness Emphasis with Capital Investment Emphases on Remaining Lands Alternative

1. *Purpose.* The purpose of this required alternative is to emphasize wilderness and evaluate the potential for maintaining or increasing market outputs on the nonwilderness portions of the forest through intensified management.

2. *Specifications*

a. This alternative is not necessarily the maximum wilderness alternative. However, be sure that it has a fairly substantial amount of quality roadless acres recommended for wilderness.

b. Assure intensive management of nonwilderness lands in this alternative to maintain or increase commodity outputs as compared to the current. If this level of output is not feasible, come as close as possible to the current. Accomplish intensive management in an economically efficient manner.

3.57—Other Alternatives. Other alternatives are developed to describe a complete range of reasonable choices available to the decisionmaker. Be sure that there are no significant gaps or voids between the upper and lower limits established through benchmark analysis.

3.58—Constraints on Alternatives

1. List and describe constraints for every planning alternative analyzed in detail. Separate those that are common to all alternatives, such as constraints required to honor management requirements, from those that vary by alternative.

2. Explain in detail why each constraint, or related set of constraints, is necessary. Explain how the constraints meet management requirements, environmental standards, or multiple-use goals and objectives.

The identification of issues, concerns, and opportunities should provide specific reasons for having certain constraints; if so, explain.

3. To the extent that discretionary constraints common to each alternative are additional to those required to meet management requirements (and are not necessary to ensure technically implementable), explain why it is necessary to include them in every alternative or why they do not vary among alternatives.

4. Define the monetary opportunity costs and other resource implications of constraints that significantly reduce present net value. Always do this for constraints that are common to all alternatives. Make every effort to make these determinations during the systemmatic process of formulating alternatives.

5. Describe the processes used to test and evaluate all constraints to ensure that they are cost efficient in achieving the objectives of each alternative.

3.6—ESTIMATED EFFECTS OF ALTERNATIVES. Completing this planning action provides information for comparing alternatives and their response to public issues, management concerns, and resource opportunities. Use the results to evaluate and recommend selection of a preferred alternative and to prepare the draft environmental impact statement. Document analytical procedures, data sources, and the evaluation process in consideration of the effects on:

1. Outputs of goods and services.

2. Sustained yield and productivity of resources.

3. The physical and biological environment.

4. The social and economic environment.

5. Prime farmlands, wetlands, floodplains, and energy requirements.

3.7—EVALUATION OF ALTERNATIVES AND PREFERRED ALTERNATIVE RECOMMENDATION. Evaluation of forest plan alternatives leads to the Forest Supervisor's recommendation of a preferred alternative to be displayed in the draft EIS and as the proposed forest plan. Document the evaluation procedures in the planning records leading to the draft EIS and proposed plan recommendation, but do not make these available for public review until the record of decision accompanying the final plan and environmental impact statement is made available to the public.

Adjustments to the draft may be made, based upon public input and other factors, in preparation of the final plan and environmental impact statement. During this process, the following is considered predecisional, deliberative information (FSM 6270) and is not be displayed until the record of decision is prepared:

1. The process used to evaluate the alternatives and to arrive at the preferred alternative.

2. The physical, biological, social, and economic criteria used to evaluate the alternatives.

3. The results of the evaluation.

3.8—PLAN APPROVAL. Document procedures used in approving the final forest plan in the record for decision. The decision is made by the Regional Forester, based on the recommendation of the Forest Supervisor, following analysis of public comment on the draft plan and EIS.

Chapter 4—Forest Planning Documents

Contents

14.1 ENVIRONMENTAL IMPACT STATEMENT OUTLINE
14.11 Summary
14.12 Chapter 1—Purpose and Need
14.13 Chapter 2—Alternatives Including the Proposed Action
14.14 Chapter 3—Affected Environment
14.15 Chapter 4—Environmental Consequences
14.16 Chapter 5—List of Preparers
14.17 Chapter 6—List of Agencies, Organizations, and Persons to Whom Copies of the Statement are Sent
14.18 Index
14.19 Appendices
14.19a Appendix A—Issues, Concerns, and Opportunities
14.19b Appendix B—Description of Analysis Process
14.19c Appendix C—Roadless Area Evaluation
14.19d Appendix D—Forest Service Response to Comments
14.2 FOREST PLAN OUTLINE
14.21 Chapter 1—Forest Plan Introduction
14.22 Chapter 2—Summary of the Analysis of the Management Situation
14.23 Chapter 3—Response to Issues, Concerns, and Opportunities
14.24 Chapter 4—Forest Management Direction
14.24a Forest Management Goals
14.24b Forest Management Objectives
14.24c Standards and Guidelines
14.24d Desired Future Condition of the Forest
14.24e Management Prescriptions
4.25 Chapter 5—Implementation of the Forest Plan
14.25a Implementation Direction
14.25b Monitoring and Evaluation Process
14.25c Amendment
14.26 Glossary
14.27 Appendices
14.3 RECORD OF DECISION
14.31 Table of Contents
14.32 The Decision
14.33 Alternatives and Issues Considered
14.34 Rationale for the Decision
14.35 Mitigation and Monitoring
14.36 Implementation
14.37 Appeal Rights
14.38 Approval

This chapter describes the documentation of the planning process by providing an outline for the contents of environmental impact statement accompanying the forest plan and for the plan itself.

4.1—ENVIRONMENTAL IMPACT STATEMENT OUTLINE. Direction for environmental impact statement preparation is in 40 CFR Parts 1500–1508, FSM 1950, and FSH 1909.15. The outline contained in this section is a list of additional content requirements for statements accompanying forest plans. Requirements are the same for both draft and final statements unless otherwise indicated.

4.11—Summary. The purpose of the summary is to summarize the content of the environmental impact statement (40 CFR 1502.12). The summary should stress major conclusions, areas of controversy, issues raised by agencies and the public, the issues to be resolved, and the preferred alternative and range of alternatives analyzed. It should be limited to 20 to 25 pages including the effective use of a few tables. It should be clearly written, complete, accurate, candid, and readable so as to invite review of the parent document. The summary should contain the following sections:

1. *A Summary of Chapter 1—Purpose and Need.* Introduce the document and the concept of the summary. Identify the nature of the decision and content of the environmental impact statement. Summarize the purpose and need for the plan and environmental impact statement. Tie to the National Forest Management Act and the National Environmental Policy Act and their implementing regulations. Summarize the public issues, management concerns, and resource opportunities and the process for identifying ICO's.

2. *A Summary of Chapter 2—Alternatives Including the Proposed Action.* Summarize the process used to develop alternatives. Describe each alternative in terms to its goals and objectives. Summarize a comparison of the alternatives through the use of narrative and tabular displays. Include a

table that lists alternatives in decreasing amounts of vegetative management, displays pertinent resource outputs, and summarizes economic tradeoffs.

3. *A Summary of Chapter 3—Affected Environment.* Present a brief overview of the environmental setting by describing the resource and environmental components to be affected.

4. *A Summary of Chapter 4—Environmental Consequences.* Present a summary of significant environmental consequences and briefly describe mitigation measures that will be used in plan implementation.

4.12—Chapter 1—Purpose and Need. This chapter identifies the reason(s) for preparing and environmental impact statement (40 CFR 1502.13). It should address the following elements:

1. *Introduction.* The introductory paragraphs describe the nature of the decision to be made and the content of the environmental impact statement (EIS). In this paragraph:

a. Assert the guiding principles of multiple-use and sustained-yield management.

b. Describe net public benefit to meet the definition in 36 CFR 219.3.

c. Briefly describe content. Include statements that the FIS discloses environmental effects and considers alternatives to the proposed action.

d. Note the separation of the EIS and forest plan. Incorporate the plan by reference and indicate that the plan is the preferred alternative presented in the EIS.

e. Note the scope of the planning horizon but place emphasis on management during the 10 to 15 year plan period.

2. *Planning Process.* The second section summarizes national, regional, and forest planing linkages, legislative authorities, and the planning process. In this section:

a. Describe the relationship to the Renewable Resources Program and the regional guide.

b. Refer to statutes governing planning and the implementing regulations (FSM 1901 and 1920.1).

c. Briefly outline planning and environmental analysis process steps.

d. Include a statement on tiering proposed projects to the environmental impact statement during plan implementation (40 CFR 1508.28).

3. *Location.* Provide and overview of the forest's location, including a narrative description of the planning area and a one-page map.

4. *Issues, Concerns, and Opportunities.* In this section:

a. Summarize the process used to identify issues, concerns, and opportunities.

b. List ICO's to be considered in the forest plan. State possible resource conflicts in responding to the ICO's. Identify the interest groups and institutions associated with the issue and identify indicators of response and their measurements used in responding to ICO's.

c. Refer to Appendix A on ICO's.

d. Discuss resource use and development opportunities.

5. *Final Environmental Impact Statement.* In this section:

a. Provide a summary of draft EIS public participation activities and reference Appendix D for further discussion and display of public comment received and Forest Service response to the comments.

b. Indicate the changes between the draft and final and further summarize changes made in the final EIS as a result of public comment. Highlight new items of emphais or controversy that developed as a result of the draft review and state how the final resolves the items.

6. *Planning Records.* In this section:

a. Indicate availability of planning records and state where they may be viewed.

b. Note the presence and location of the glossary and other materials that would help the reader more easily understand the EIS and plan.

4.13—Chapter 2—Alternatives Including the Proposed Action. This chapter of the environmental impact statement summarizes the process used to develop alternatives, presents alternatives considered, and then compares the alternatives to provide an opportunity for objective evaluation (40 CFR 1502.14). Begin with an overview of the chapter's organization and reference the analysis process described more fully in Appendix B. The following items should then be covered in chapter 2:

1. *Overview of Alternative Development.*

a. Explain the concept of net public benefit and its relation to alternative formulation, including the concept of priced and nonpriced benefits and costs and their use in decisionmaking. Differentiate between qualitative and quantitative nonpriced benefits.

b. Describe the basis of developing the alternatives (36 CFR 219.12(f)) including the process used in formulating and analyzing benchmarks and alternatives.

c. Explain the relationship of the forest's management situation to projected demand and supply potentials and explain how management and supply protentials respond to the issues and concerns.

d. Summarize changes made in alternative development between the draft and final. Examples include a discussion of sensitivity analysis done on timber, recreation, or wildlife valuing or on other questions about assumptions used to develop alternatives.

2. *Description of the Analysis Process.*

a. Briefly describe the inventory process that identified land attributes, production potentials, and capability areas.

b. Describe the process used to develop optional management objectives (prescriptions) and the various management intensities used.

c. Describe the role of FORPLAN in selecting and scheduling management options. Indicate the degree of flexibility that FORPLAN has in reaching cost efficient solutions.

3. *Development and Implications of Minimum Specific Management Requirements.* Develop minimum specific management requirements as defined in 36 CFR 219.27 using the analytical process described in section 3.21 of this handbook. Display the opportunity costs of meeting the management requirements for the maximum present net value benchmark and, when the opportunity costs in total are significant (in excess of 2% change in PNV and ASQ), discuss the opportunity costs of meeting the standards and guidelines for the preferred alternative.

When opportunity costs of meeting the standards and guidelines for the preferred alternative are estimated to be significant over the planning period, provide the following information:

1. Define the alternative sets of standards and guidelines that were examined for each management requirements. Indicate the scientific basis for the alternatives. If alternatives were not examined, state why.

2. Estimate the opportunity costs and likelihood of satisfying the management requirements associated with the alternative sets of standards and guidelines, in quantitative terms when possible.

3. Discuss why particular sets of standards and guidelines were selected and why others were rejected.

4. Identify the monitoring and/or research that is needed prior to revision of the plan to permit reevaluation of the standards and guidelines.

The analysis of standards and guidelines to meet management requirements must be documented or referenced in chapter II of the

environmental impact statement. The discussion should include:

1. The rationale for initially selecting a set of standards and guidelines and the scientific basis for that selection.

2. The opportunity costs and other tradeoffs considered when evaluating alternative standards and guidelines.

3. The reasons why one set of standards and guidelines was selected and used in the planning process.

4. *Development and Use of Benchmarks.*

a. Discuss the role and use of benchmarks, including the results of benchmark analysis in defining resource potentials.

b. Show how benchmarks assisted in formulating alternatives. Describe the constraints common to all benchmarks and the process used for identifying tradeoffs in implementation of management requirements.

c. Include the rationale for eliminating benchmarks from further detailed development and analysis. Refer to Appendix B, Description of Analysis Process.

5. *Range of Alternatives.*

a. Discuss the information used to develop the alternatives. For the final EIS, mention changes made between draft and final pertaining to the range of alternatives.

b. Describe the decision space resulting from the analysis of the management situation for selected indicators of issue resolution.

c. Describe the constraints used to develop alternatives and indicate modification made to the constraints in response to public comment.

d. Discuss how all facets of mitigation are a part of alternative formulation (40 CFR 1508.20).

6. *Alternatives Eliminated from Further Detailed Study.* Describe the alternatives eliminated from further detailed study and the rationale for eliminating them.

7. *Alternatives Considered in Detail.* Describe the alternatives in equal detail.

a. Include the objectives to be achieved by each and describe how each alternative would respond to issues, concerns, and opportunities (ICO's).

b. Describe the purpose, intent, or management emphasis of each alternative in succinct terms. Mention changes between draft and final.

c. Indicate that analytical results of the alternatives will display outputs, timeframes, costs, benefits, and availability of acres for management.

d. Refer to mitigation measures in management prescriptions that may be unique for any alternative, and refer to other parts of the EIS where additional or detailed information is available.

e. Explain the basis for development and use of the "no action" alternative (36 CFR 219.12(f)(7)). Reference the NEPA requirement to use this alternative as a basis for comparison of all alternatives.

8. *Comparison of Alternatives.* The alternative comparison section describes management alternatives for significant resources; presents the outputs; summarizes physical, biological, economic, and social impacts; and displays discounted costs and benefits (PNV) in a way that sharply defines tradeoffs and allows a reader to make an objective evaluation. Ensure the changes made between draft and final are clearly indicated and that they are responsive to public comment. Refer to chapers III and IV and appropriate appendices to substantiate conclusions reached in this comparison. The following items should be discussed and included in the comparison of alternatives:

a. Discuss the application of management direction to the land through use of management areas and management prescriptions. Indicate that the acreage and location of land areas assigned to a management area varies by alternative while the direction for the management area remains the same. Briefly describe each management area and accompanying direction to be applied. Use a table to indicate the acres of land by management area by alternative.

b. Present a table displaying quantitative resource outputs by alternative and selected benchmarks, if appropriate. Order the alternatives in columns from most to least suitable land selected for timber production. Indicate this ordering is used to present a logical progression of all outputs due to the close tie experienced with vegetation management. Arrange the units of measures in rows in logical groupings by combining similar items such as recreation use/outputs and other similar resources.

c. Discuss qualitative resource outputs and effects. This discussion should support the quantitative table with discussion as necessary to show key relationships. If this discussion is better adapted to a tabular display, order the alternatives in the same order as in the quantitative table.

d. Provide a discussion of how each alternative responds to the issues, concerns, and opportunities. Provide a cross walk to the previous two tables if appropriate.

e. The remainder of the chapter focuses on outputs for and effects upon individual resources. The discussion should focus on significant variations by alternative and should highlight unavoidable adverse effects when identified. As a minimum, the following resources/uses should be considered in displaying alternative comparisons.

(1) *Recreaction.* Provide a general orientation to the types and scope of recreation opportunities to be managed and introduce the Recreation Opportunity Spectrum (ROS) concept. Discuss each type of recreation use individually.

(a) Dispersed—Present the various dispersed recreation settings and relate how the supply (capacity) by alternative compares with projected demand. Discuss the differences by ROS class by alternative in tabular or narrative displays.

(d) Developed—Identify existing capacity and development and timefame required to meet projected demand. Discuss the types and location of development planned and indicate the differences beween alternatives.

(c) Hunting and Fishing—Indicate the planned wildlife and fish user days by alternative and display the response to user demand over time.

(d) Wild and Scenic Rivers—Identify wild and scenic river eligibility as appropriate. If suitability is analyzed, indicate the differences by alternative.

(2) *Wilderness.* The goal of this section is to describe the roadless area situation and to indicate proposed management decisions for these areas. This section should:

(a) Identify acres recommended for wilderness by alternative to include a table indicating recommendations for each individual roadless area by alternative.

(b) In the same or in a different table, indicate management emphasis for each roadless area when not recommended for wilderness including the acres of the area that will remain roadless and undeveloped at the end of the planning period.

(3) *Visual Quality.* Indicate the acres to be managed to meet visual quality objectives of preservation, retention, partial retention, modification, and maximum modification for each alternative.

(4) *Research Natural Areas.* Indicate acres, names of areas, and resources represented by alternative.

(5) *Wildlife.* Provide the following listings:

(a) Indicator species with management emphasis specified for each alternative.

(b) Threatened and endangered species with consultation with the US

Fish and Wildlife Service noted. Note changes made between draft and final due to a biological opinion from the US Fish and Wildlife Service.

(c) A listing of the amount of old growth timber remaining after the first and in the tenth decade.

(6) *Fish.* Discuss indicator species, habitat capability, and smolt production by alternative.

(7) *Range.* Discuss planned use of the resources by alternative and the relationship to range capacity and demand.

(8) *Timber.* Display the following for the timber resource in both cubic foot and board foot measure for all decades:

(a) Compare current and future timber outputs for all alternatives by indicating projected allowable sale quantity, timber sale program quantity, and long-term sustained yield capacity. Include a display of lands suitable for timber production by alternative and the past decade allowable sale quantity, average annual volume sold, and average annual volume harvested.

(b) Discuss the differences between the current level of timber production and the projected output for all alternatives. Include explanations for differences in utilization standards, inventories/inventory standards, yield calculations and tables, land base acreage (both tentatively suitable and suitable acres), and changes in management requirements.

(c) Discuss the silvicultural methods available to manage the resource and the acres scheduled for clear-cut, shelterwood, and selective harvest by alternative.

(9) *Soil and Water.* Insure the comparison:

(a) Displays and discusses the sediment production potential in terms of the activities that generate sediment. Include a table displaying amounts of sediment producing activities by alternative as indicators of their sediment production potential. Rank alternative as to their relative risk of affecting watersheds and discuss differences among alternatives.

(b) Discusses best management practices and states they will be used in all alternatives to assure that activities will meet or exceed water quality standards. Mention the use of monitoring during project execution to ensure meeting water quality goals and identify how adjustments will be made in projects where conflict with the goal is identified.

(10) *Minerals.* Show mineral potential and indicate areas closed, restricted, and opened to entry by alternative.

(11) *Transportation System.* The focus of this section is on road and trail construction and management. Separate construction from reconstruction and indicate planned outputs by alternative for both roads and trails. Indicate the miles of roads to be seasonally or permanently closed with a total of the transportation system indicated by alternative. Use a narrative discussion to distinguish between plan period and planning horizon transportation needs and indicate flexibility of the transportation system to meet future management needs..

(12) *Fire.* Include a discussion of the differences in fire management by alternative.

(13) *Energy.* Include a table showing energy consumption by major categories of activities by alternative for the planning period in billion BTU's.

(14) *Environmental Consequences.* Present a summary of environmental consequences from chapter IV to explain the alternatives being considered and their differences. Present in tabular form the significant quantitative and qualitative environmental effects that bear on the issues and concerns by alternative. Summarize and refer to chapter IV to present environmental effects by alternative and appropriate benchmarks. Highlight unavoidable adverse effects and discuss significant variations in effects by alternative.

(15) *Economic Effects.* Display and discuss differences in economic benefits and costs, and the general reasons for those differences. Include here, or provide a cross-reference, to a full discussion elsewhere in the EIS of the relationship between economic values and net public benefits.

(a) Display in a table, as shown in exhibit 1, data corresponding to the following:

Rows: List maximum present net value (PNV) benchmark and the alternatives in order of decreasing PNV.

Columns:

Column 1: Present net value (PNV).

Column 2: Incremental differences in PNV among successive alternatives.

Column 3: Discounted costs.

Column 4: Incremental difference in discounted costs between alternatives.

Column 5: Discounted economic benefits.

Column 6: Incremental differences in discounted economic benefits between alternatives.

Minor variations of column ordering to meet Regional Office guidance are permissible. Discuss the table and the differences displayed.

(b) Display in a table, as shown in exhibit 2, data corresponding to the following:

Rows: Alternatives ranked in order of decreasing PNV.

Columns:

Column 1: Present net value (PNV).

Column 2: Largest discounted economic benefits associated with a single resource output.

Column 3–5: Discounted economic benefits associated with other individual outputs that account for a significant portion of total discounted economic benefits.

Column 6: Largest discounted costs directly attributable to producing a single resource output.

Column 7: Discounted costs attributable to expenditures for roads.

Additional Columns as Necessary: Discounted costs directly attributable to other individual outputs that account for a significant portion of total discounted costs.

Minor variations of column ordering to meet Regional Office guidance are permissible. Include all discounted benefits and all discounted costs in the table. Include a footnote with this table saying that direct comparisons of benefits and costs displayed for individual resource outputs provide general indications of relationships, but that these general indications may be misleading because many outputs in multiple-use forestry have common costs of production that cannot be reliably separated and attributed to individual resources.

Define general patterns of changes across alternatives in PNV, discounted benefits, and discounted costs. Explain deviations from general patterns.

Recognize the likely or possible significance of currently speculative and unquantified economic values, such as those often associated with minerals. To the extent reasonable, indicate in the narrative discussion whether or not they are likely to vary significantly among alternatives.

(c) Describe and distinguish between capital investment and operations and maintenance costs and between costs that do and do not vary significant by alternative. Reference detailed discussion of costs in Appendix B.

(d) Discuss significant differences in economic benefits among alternatives by market and nonmarket resources. Distinguish between financial values collected as cash receipts and economic benefits received by users without payment.

(e) Display in a table, as shown in exhibit 3, data corresponding to the following rows and columns:

Rows: Alternatives ranked in order of decreasing average annual (undiscounted) net cash flows in the first decade.

Columns:

Column 1: Average annual net cash flow in the first decade.

Column 2: Average annual total costs in the first decade.

Column 3: Average annual total cash receipts in the first decade.

Column 4: Average annual noncash economic benefits in the first decade.

Columns 5–8: Repeat the data of columns 1 through 4 for a later decade that best defines changes in net cash flows over time.

Minor variations of column ordering to meet Regional Office guidance are permissible. Include footnote stating in effect that costs are limited to agency or taxpayer expenditures and that payments to counties and expenditures by cooperators are excluded.

(f) For the purposes of preparing this section of the EIS, noncash economic benefits are defined to be that portion of total economic benefits not collected as cash receipts. Define the relationship between cash receipts and total economic benefits. Contrast the ranking of alternatives in exhibit 1 and exhibit 3. Discuss the differences in values displayed for the different decades in exhibit 3.

(g) Follow the general order of presentation in items a-f above, but subdivisions of the materials are optional. Supplementary figures and tables useful in more fully explaining the situation on a forest are optional. Liberal cross referencing to more detailed discussions is encouraged.

(16) *Major Tradeoffs Among Alternatives.* Display and discuss the major tradeoffs related to major issues and national concerns among alternatives. State that a complete understanding of differences among alternatives requires reading all of chapters II and IV.

(a) Provide a partial context for evaluating alternatives by briefly stating how and which national, regional, and local publics would be served by forest management in the future.

(b) Summarize in text form quantified indicators of responsiveness to all issues, concerns, and opportuntities that lead to differences in alternatives and that vary across alternatives. Cross-reference full discussions of these indicators in Appendix A or elsewhere in accord with Regional Office guidance.

(c) Define, as indicators of national interest, present net value and net cash flow.

(d) Include forest-dependent jobs and community income as indicators of either responsiveness to ICO's or of local community interest.

(e) Display in a table, as shown in exhibit 4, quantitative data corresponding to the following rows and columns:

Rows: Alternatives ranked in order of decreasing PNV.

Columns:

Column 1: Present net value (PNV).

Column 2: Average annual net cash flow in first decade and in later decade reported in exhibit 3.

Column 3: Average annual noncash benefits in first decade and in later decade reported in exhibit 3.

Remaining Columns as Necessary: The most appropriate forms of expression in quantitative terms of each of the remaining indicators indentified above. These must include indicators for forest-dependent employment and income for the average annual year in first decade.

(f) Summarize as briefly as possible in the text the meaning of differences in the indicators as displayed in exhibit 4 for each alternative, in order of decreasing PNV. Emphasize similarities and differences among alternatives. Do not dwell on minor differences; include differences not reflected in exhibit 4 only as necessary. Highlight the sources or reasons for differences in cash (financial) and/or noncash benefits. Then describe the positive and negative changes in other indicators in a manner that makes clear the significant trade-offs that accompany changes in responses to ICO's and in net economic benefits across alternatives.

EXHIBIT 1.—PRESENT NET VALUE AND DISCOUNTED COSTS AND BENEFITS OF ALTERNATIVES

[Million dollars]

Alternative/Benchmark	PNV	Change	Discounted		Discounted	
			Costs	Change	Benefits	Change
Max PNV (Benchmark)	2,569		866		3,435	
Alt. 2	2,417	−152	937	71	3,354	−81
Alt. 4	2,333	−84	932	−5	3,265	−89
Alt. 8 (Current Mgt)	2,163	−170	788	−144	2,951	−3
Alt. 1 (RPA)	2,140	−23	826	38	2,967	16
Alt. 6	2,014	−99	796	−30	2,837	−130
Alt. 5	1,962	−79	785	−11	2,747	−90
Alt. 10	1,909	−53	753	−32	2,662	−85
Alt. 12 (Departure)	1,831	−78	645	−108	2,476	−186
Alt. 11 (Preferred)	1,799	−31	638	−7	2,437	−39
Alt. 7	1,515	−284	730	92	2,245	−192
Alt. 9	1,460	−55	712	−18	2,172	−73
Alt. 3	1,320	−140	661	−51	1,981	−191

EXHIBIT 2.—PRESENT NET VALUE AND DISCOUNTED BENEFITS AND COSTS BY RESOURCE GROUPS [1]

[Million dollars]

Alternative	Present net value	Discounted benefits				Discounted costs				
		Timber	Rec.	Range	Other	Timber	Roads	Rec.	Range	Other
2	2,410	3,103	246	3	0	357	332	63	6	179
4	2,333	2,907	263	3	0	332	337	69	7	187
8 Current	2,163	2,611	259	3	0	275	80	60	6	175
1(RPA)	2,140	2,674	288	3	0	302	271	68	6	179
6	2,041	2,504	249	3	0	290	266	58	5	177
5	1,962	2,458	286	3	0	298	234	58	5	190
10	1,909	2,371	287	3	0	275	224	69	5	180
12 Depart	1,831	2,182	292	2	0	225	217	61	3	139
11 Prefer	1,799	2,143	292	2	0	219	216	61	3	139
7	1,515	1,872	307	3	0	283	198	61	3	185
9	1,460	1,794	305	3	0	273	187	71	3	178
3	1,320	1,631	290	3	0	244	176	62	3	176

[1] Direct comparisons of benefits and costs by individual resource provide broad indications of relationships, but they may be misleading because many costs are nonseparable under multiple use management.

EXHIBIT 3.—AVERAGE ANNUAL CASH FLOWS AND NONCASH BENEFITS IN THE FIRST AND FIFTH DECADES BY ALTERNATIVE [1]

[Million dollars]

Alternative	Decade 1				Decade 5			
	Net receipts	Total costs	Total receipts	Noncash benefits to users	Net receipts	Total costs	Total receipts	Noncash benefits to users
2	30	33	63	7	161	33	194	15
1	21	29	50	8	137	29	166	18
6	19	28	47	8	134	28	162	14
12	18	21	39	8	131	23	154	18
11	17	22	39	8	122	22	144	18
8	17	25	42	7	160	26	186	15
4	14	35	49	7	163	32	195	16
5	11	25	36	8	148	30	178	18
10	9	23	32	8	137	29	166	18
7	1	28	29	8	116	27	143	19
9	−1	27	26	8	110	25	135	19
3	−4	25	21	8	98	24	122	18

[1] Costs include only those of the Forest Service; receipts do not include payments to counties.

BILLING CODE 3410-11-M

Exhibit 4

Indicators Of Responsiveness of Alternatives to Major Issues And National Concerns

				Timber Issues			Water Issue		Wilderness & Roadless		Fisheries & Wildlife Issues	
ALTERNATIVE	PNV $ Million	Decades 1/5 Average per Year Net Receipts $ Million	Noncash Benefits $ Million	First Decade Harvest Average/ Annual MMBF	LTSY	Suitable Timber Lands M ACRES	Smolt Production by Decade 1st Index 1/	3rd Index 1/	Wilderness M Acres	Roadless Management M Acres	Catchable Trout Decade 1st/5th Index 1/	Summer Elk by Decade 1st/3rd Index 1/
2	2,417	30/161	7/15	303	616	1,769	100	114	0	17	94/102	94/83
4	2,333	14/163	7/16	296	624	1,786	98	114	69	0	95/105	95/84
8	2 163	17/160	7/15	253	552	1,594	100	117	131	90	100/111	100/92
1	2 140	21/137	8/18	256	504	1,501	99	116	153	131	99/109	105/93
6	2 041	19/134	8/14	248	495	1,453	100	116	374	0	99/110	107/94
5	1 962	11/148	8/18	283	541	1 552	101	116	146	220	100/110	104/99
10	1 909	9/137	8/18	230	504	1,415	101	117	640	0	101/110	104/99
12	1 831	18/131	8/18	190	424	1,522	100	120	142	188	100/112	106/104
11	1 799	17/122	8/18	192	424	1,522	101	120	142	188	100/112	100/104
7	1 515	1/116	8/19	189	453	1,926	101	119	252	283	100/112	107/106
9	1,460	-1 110	8/19	182	423	1,230	100	120	390	208	100/112	108/108
3	1 320	-4/98	8/18	164	385	1,107	101	120	53	15	100/112	109/109

	Community Effects Issue			Recreational Issue				
		Percent Change Jobs and Income 1st Decade		Demand Satisfied - 5th Decade			% VQ Management of Managed Tim Acres	
ALTERNATIVE	Payments To County Increase 1st Decade $ MM	Jobs %	Income %	Developed %	Semi-Primitive Non-Motor %	Motor %	Retention %	Partial Retention %
2	17 6	0	9	75	35	0	5	1
4	12 7	6	6	75	85	10	5	1
8	11 9	1	1	48	105	31	2	7
1	14	4	4	101	105	38	4	1
6	13 3	3	3	48	309	0	3	1
5	10	0	1	75	134	79	20	69
10	9 0	2	2	101	398	0	9	45
12	11 0	0	0	90	109	72	19	65
11	11 0	0	0	90	109	72	19	65
7	8 3		-2	101	199	86	23	85
9	7 ?	2	3	101	309	55	21	84
3	6 .	4	5	101	464	3	17	74

1/ Index 100 equals first decade annual production under continuation of current program Alternative 8 which is 1,467 000 smolt 932.000 catchable trout and 13.300 Summer elk

BILLING CODE 3410-11-C

4.14—Chapter 3—Affected Environment. (40 CFR 1502.15). This chapter should help the environmental impact statement reviewer understand the effects of implementing each alternative considered in detail. Describe the current condition, past practices, and future trends as indicated below:

1. Succinctly describe the existing environment of the area(s) affected by the alternatives. Include areas within and outside the forest boundary. The description should be commensurate with the importance of the potential impact upon the resource and related to the issues, concerns, and opportunities identified during the planning process and the decisions being made in the forest plan.

2. Describe physical and biological characteristics of the area affected. Summarize significant existing resources including potential problems, conflicts, constraints, or opportunities. Discuss and resource supply potentials and projected future demands for resource outputs.

3. Discuss historic costs and receipts associated with timber sales and recent history of below cost sales on the forest. Illustrate situations where individual sales may not recover costs but contribute to encomic efficiency objectives. Display the allowable sale quantity and actual volume of timber sold and harvested by year during the period that the existing plan has been in effect.

4. Describe social and economic characteristics. Present the demographic and employment/income picture of the planning area. Identify groups potentially affected by the alternatives, state where they live and identify how they may be affected.

4.15—Chapter 4—Environmental Consequences. (40 CFR 1502.16). This chapter describes the scientific basis for determining impacts and the specific environmental consequences that can be anticipated with implementation of the alternatives.

1. *Introduction.* State the purpose and content of the chapter.

2. *Activities of No Significant Environmental Effect.* In this section of the chapter, identify those environmental issues eliminated from further detailed study or covered by previous environmental review (40 CFR 1501.7(a)(3)).

3. *Environmental Consequences.* Describe environmental consequences associated with the alternatives. Note that resource outputs and/or activities are not necessarily effects.

a. Describe direct, indirect, and cumulative environmental effects of the alternatives.

b. Identify possible conflicts between the proposed action and other Federal, Regional, State, and local goals and objectives.

c. Identify energy requirements and the conservation potential of the alternatives and their mitigation measures.

d. Identify nonrenewable resource requirements and the conservation potential by alternative. Describe mitigation measures if developed.

e. Discuss consequences upon urban quality, historical values, and cultural resources.

f. Discuss incomplete or unavailable essential information and how it is or will be addressed.

g. Discuss cumulative effects on the social and economic environment, including any conflicts that could occur with energy requirements of other agencies and the Forest Service.

h. Discuss the relationship between short-term use and long-term productivity.

i. Discuss irreversible and irretrievable commitment of resources.

j. Discuss probable adverse environmental effects that are unavoidable.

4. *Mitigation.* Describe the mitigation measures included in management prescriptions and the additional measures needed. Provide information or references to support conclusions regarding effectiveness of mitigation measures.

4.16—Chapter 5—List of Preparers. Present a brief list of those individuals who made a contribution to the planning effort. List each person's name, academic degree(s) and major(s), years of experience in planning, and the principle function or subject matter handled. The list should normally not exceed two or three pages.

4.17—Chapter 6—List of Agencies, Organizatins, and Persons to Whom Copies of the Statement are Sent. Group recipients by Federal officials and agencies, Indian tribes, State officials and agencies, local officials and agencies, libraries, organizations, and individuals. Do not include addresses and phone numbers of individuals. This chapter of the final EIS may also contain response to comments received on the draft EIS.

4.18—Index. Guidelines for development of an index are in chapter 60 of FSH 1909.15, the Environmental Policy and Procedures Handbook.

4.19—Appendices. Three appendices are mandatory in the draft environmental impact statement—Issues, Concerns, and Opportunities; Description of Analysis Process; and Roadless Area Evaluation. Include other appendices if they are necessary to support special analyses and topics of special concern. At appropriate points in the text of the EIS, provide cross references to the appendices. The final environmental impact statement must include a fourth appendix—Public Comment.

4.19a—Appendix A—Issues, Concerns, and Opportunities.

1. Describe the process used to identify issues, concerns, and opportunities (ICO's). Also, list criteria and describe the screening process used to narrow the scope of ICO's.

2. Describes the selected issues, concerns, and opportunities.

a. List issues addressed in the environmental impact statement and describe relationships among resources within and between issues.

b. Distinguish ICO's deferred for resolution outside the forest planning process, treated the same way in all alternatives, and/or treated differently in the design of alternatives.

c. Describe both quantitatively and qualitatively the forest's potential capability to respond to each ICO or to groups of ICO's.

d. Describe how ICO's and resultant goals and objectives were used to build alternatives within the range defined by the benchmarks.

e. Discuss which of the ICO's are competitive and require trade-off evaluation.

f. Identify interest groups and institutions associated with the issues, the conflict involved, and the indicators of response and their measurements.

3. Describe the process used to consult with others.

a. List other agencies and Indian tribes contacted. Describe other agency and tribal plans reviewed and how such plans figured in the Forest Service planning process.

b. List other consultations and contacts in addition to general public involvement activities.

4.19b—Appendix B—Description of Analysis Process. This appendix describes the forest's analysis process. Summarize the analysis process under the following headings:

1. *Introduction.*

a. Describe the complexity and magnitude of the planning problem along with the opportunity for use of analytical techniques to reduce its complexity and magnitude to manageable proportions. Provide an overview of the process; devote at least one paragraph to each step of the

process. Refer to and incorporate the planning records (40 CFR 1502.21).

b. Distinguish between the analytical phase of the process and the judgmental and execution phases. Cite location of judgmental and execution phases in the environmental impact statement.

2. *Inventory Data for Information Collection.*

a. Briefly describe conceptual data needs and indicate how the interdisciplinary team collected and used data to:

(1) Delineate basic capability areas.

(2) Stratify the forest into analysis areas.

(3) Determine production coefficients.

(4) Determine areas that are tentatively suitable for management practices.

(5) Develop allocation and scheduling alternatives.

(6) Monitor implementation.

(7) Develop subsequent programs for plan implementation.

b. Summarize, cite, and describe sources of data used in analysis.

3. *The Forest Planning Model (FORPLAN).*

a. *Overview.* Develop an introductory overview of FORPLAN including its basic concepts such as analysis areas, prescriptions, coefficients, and constraints. Describe the development of the prescriptions and their analysis in the FORPLAN models to provide a cost-efficient means of achieving objectives.

b. *Analysis Process.* Explain the analysis process, including the various analytical tools. Discuss the analysis prior to FORPLAN, use of FORPLAN in the analysis, and the analysis done in addition to FORPLAN model analysis. Indicate how cost efficiency beyond that revealed through FORPLAN analysis is considered in achieving objectives.

c. *Delineation of Analysis Areas.* Present the process, criteria, and implications of delineating the analysis areas. Include as appropriate:

(1) Spatial differences related to production costs.

(2) Influences of inventory and data reliability on the delineation of analysis areas.

(3) Effects of computer model limitations of analysis area delineation.

(4) Reporting needs by specific geographic area.

(5) Need for output controls by analysis area of timeframes based on legal or policy constaints.

(6) Trade-offs made in determining the relationship of spatial issues to resource use and production issues and rationale for determination.

d. *Selection of Management Prescriptions.* Present the process and criteria used in (and the implications of) selecting management prescriptions for FORPLAN. Discuss the interdisciplinary team process, and research used, explain how prescriptions deal with minimum specific management requirements, and discuss the process used to ensure development of an adequate range of prescriptions. Define the purpose, criteria, and assumptions for each category of prescription, and explain the consideration of cost efficiency in development of prescriptions. Present a standard and guideline table comparing prescriptions that discusses how each set of standards and guidelines varies from one analysis level to another and describe the measures taken to ensure that a broad range of prescriptions was available (36 CFR 219.14(b)(c)). Finally, make certain there is a reference to planning records for those reviewers who wish a more detailed presentation of prescriptions by analysis areas.

e. *Development of Timber Options.* For significant timber forests (FSM 1922.15(6)), summarize the process used to develop timber options for the FORPLAN model. The summary should identify criteria used to eliminate those timber options not included in the model and should discuss the role and use of economic efficiency as opposed to biologically based criteria in the development of timber options.

f. *Development of Yield Coefficients.* Describe the process of developing yield coefficients for the FORPLAN model, including, but not limited to, a description of simulation models and the research used.

4. *Economic Efficiency Analysis.*

a. Define present net value (PNV) and specify what it does and does not include. Explain the major assumptions used in cost efficiency analysis of alternatives including benefits, costs, and sources of estimates.

b. Identify parameters to include interest rates (discount) and base year dollars.

c. Describe benefits and costs in FORPLAN, benefits and costs applied outside of FORPLAN, and real cost increases/decreases used.

d. Discuss the point at which the benefit is realized for those benefits given dollar value. Also, describe benefits considered in and outside of FORPLAN.

e. Distinguish between capital investment and operation and maintenance costs.

f. Identify costs that do not vary significantly by alternative.

g. Identify and describe priced and non-priced benefits.

h. Distinguish between economic values that are collected as cash receipts and economic benefits received by users without payment.

5. *Social and Economic Impact Analysis.* (FSM 1970). In this section:

a. Provide an overview of the analysis process.

b. Identify sources of data.

c. Describe information generated from analysis through a narrative discussion.

d. Discuss the development of comparisons made in chapter 2 of the EIS.

6. *Analysis Prior to Development of Alternatives.*

a. *Introduction.* Provide a narrative description of the analysis prior to development of alternatives.

b. *Development of Management Requirements.* Explain the development and modeling of minimum specific management requirements. Identify modeling constraints necessary to meet management requirements in 36 CFR 219.27 and explain why constraints are necessary. Provide assurance that the constraints used to meet management requirements are not compounding.

c. *Benchmark Analysis.* For each benchmark:

(1) State the purpose and objective of analysis, including exploration of maximum economic and biological resource use and development opportunities; discuss evaluation of capability to produce priced and nonpriced objectives; and describe the ability to repsond to major issues and concerns.

(2) Define and state the purpose of the objectives of each benchmark.

(3) Define the constraints used to accomplish the objectives including applicable time periods.

(4) State assumptions used relative to demand, monetary values, and minimum specific management requirements to meet 36 CFR 219.27.

(5) Describe for each modeling constraint or set of constraints the change in present net value (PNV) for each benchmark; use assigned values and a PNV objective and the changes in first period production.

(6) Describe calculations for both maximum PNV benchmarks unconstrained by culmination of mean annual increment (CMAI) on significant timber forests (FSM 1922.15(6)) or those that use rotations shorter than defined by CMAI in benchmarks and alternatives.

(7) For significant timber forests, describe recalculation of maximum PNV benchmarks constrained by nondeclining yield (36 CFR 219.12(e)(1)(iii)(c)). Identify differences based on recalculations in PNV.

quantities of timber produced during each period within the planning horizon, and other significantly affected outputs and conditions.

(8) Discuss the significant relationships in the production of market and nonmarket outputs between the two maximum PNV benchmaks.

(9) Summarize the results of each of the benchmarks in terms of its resource outputs and effects, total discounted costs and total discounted benefits, PNV, acreage of prescription assignments, and the economic impact on employment and income.

7. *Narrative Description of the Formulation of Alternatives.*

a. *Introduction.* Define the alternatives and discuss the requirements of 36 CFR 219.12(f). Describe the process used to derive alternatives in terms of their relationship to issues, concerns, and opportunities (ICO's). Describe the interactive analysis process, including analysis performed, what was learned from the analysis, how the information was used to adjust the next sequential analysis, and how the potential capability to respond to each ICO or groups of ICO's was used to develop alternatives within the established decision space. In addition, describe measures taken to ensure a cost efficient solution.

b. *Constraints.* Describe the constraints common to all alternatives by identifying each constraint, its purposes, and the rationale for its establishment.

c. *Alternatives.* Describe development of each alternative by identifying its purpose and the criteria and assumptions used. Discuss the relationship between ICO's and benchmarks in terms of how they affected the design of the alternative. Identify the constraint or set of constraints needed to satisfy 36 CFR 219.27 and indicate if it is a common constaint or an additional constaint. For each constraint or set of constraints, describe the purpose and discuss why it is necessary to accomplish the goals and objectives. Explain how the constraint sets were used in a cost-effective way and display for each constraint or set of constraints the change in PNV, total discounted costs of principal resources, and the total discounted benefits of principal resources. Refer to the catalogue of constraints developed in the benchmark section. Summarize the process used to develop alternatives. Refer to the sequential, incremental analysis process documented in the planning records. Describe departure and CMAI analysis and explain how depature or CMAI limits were established, if part of the analysis.

8. *Estimate Effects of Benchmarks, Discretionary Constraints, and Alternatives.*

a. *Introduction.* Describe the purpose of identifying, estimating, and displaying the effects of each benchmark, discretionary constraint, and alternative.

b. *Testing Constraints.* Explain the process used to test constraints that have a significant effect on outputs or PNV to ensure they were the most cost efficient in achieving the objectives of each alternative.

(1) Describe any sensitivity testing conducted.

(2) Identify significant opportunity costs of constraints associated with achieving alternative resource objectives.

(3) Identify opportunity costs of constraints associated with resource outputs or conditions not assigned monetary values but supplied at specific levels.

c. *Analysis of Tradeoffs.*

(1) Define the consequences of each alternative in respect to responses to each major ICO or groups of ICO's, resource outputs, and environmental consequences including social and economic effects.

(2) List alternatives in order of increasing discount costs and decreasing present net values (PNV). Display the cost above the next lower cost alternative along with the associated change in total discounted benefits and change in PNV.

(3) Display benchmarks and explain reasons for PNV change. It is not necessary to determine or display added costs or benefits.

(4) Display for each benchmark and alternative the PNV, total discounted costs and benefits, the contribution to total discounted benefits of each priced output, the distribution of discounted costs by major input cost categories, and the specific reasons accounting for significant differences in PNV between the PNV assigned value benchmark and the alternatives.

(5) Compare each alternative and display the difference in total discounted benefits, the reasons for differences in discounted costs, and differences in the achievement of goals and objectives, or nonpriced benefits not fully reflected in PNV.

(6) Discuss the factors primarily responsible for differences in the resolution of the ICO's. List and describe each effect estimated and reference the appropriate tables and graphs for each effect.

d. *Analysis of Constraints Within Alternatives.*

(1) Describe the set of objectives reflecting the response of each alternative to ICO's. Explain model constraints designed to achieve objectives, progressive results for each set of constraints applied, and the rationale for each constraint. Use a chart to show constraints added or changed from one step to the next and the resultant differential changes, and the changes in outputs/effects and their associated discounted costs and discounted benefits.

(2) Provide a chart for each alternative examined in detail that identifies and describes the individual constraints that have the most significant effect on PNV.

4.19c—Appendix C—Roadless Area Evaluation. The intent of this Appendix is to describe the roadless areas and the analysis factors used in evaluating individual roadless areas. Contiguous roadless areas on adjacent units must be identified and evaluated in total within a forest plan. Normally, the National Forest with the largest roadless area acreage assumes the lead in this discussion. The content listed here is the minimum required; supplement as appropriate. Refer also to 36 CFR 219.17, FSM 1923, and chapter 7 of this handbook for evaluation criteria.

1. *Overview.* Provide an overview that includes:

a. Roadless area name and number of acres included in the area.

b. Location and vicinity, including access by type of road or trail.

c. Geography.

d. Topography.

e. Vegetation, including the ecosystem type(s).

f. Current uses of the area.

g. Appearance of the area.

h. Surroundings such as the characteristics of contiguous areas.

i. Key attractions, if any, such as sensitive wildlife and scenic landmarks.

2. *Wilderness Capability.* Indicate each area's capability for wilderness by describing the basic characteristics that make the area appropriate and valuable for wilderness, regardless of the area's availability or need. Address the following characteristics:

a. Natural integrity of the area; include the degree to which humans and past or present human activity have affected natural ecological processes and conditions.

b. Natural appearance; include the degree to which the area's appearance is appropriate and valuable for wilderness.

c. Opportunities for experiences often unique to wilderness, such as solitude and serenity, self-reliance, adverturous

and challenging experiences, and primitive recreation.

d. Special features of the area, including those of ecological, geological, scientific, educational, scenic, or historical value. Describe rare and endangered plant and animal species and other wildlife.

e. A description of size and shape to include the implications of the area's size, shape, and juxtaposition to external influences on the wilderness attributes.

f. A summary of the boundary conditions, needs, and management requirements should the area be designated for wilderness. Address whether or not boundary changes would enhance the wilderness characteristics or whether or not it would be possible to use boundary modifications to separate incompatible activities from wilderness attributes.

3. *Availability for Wilderness.* Indicate availability of the area by describing other resource potential and by summarizing pertinent quantitative and qualitative information. Include current use, outputs, trends, and potential future use and/or outputs. Summarize the following information for each roadless area:

a. Recreation, including tourism.

b. Information on wildlife species, populations, and management needs.

c. Water availability and use.

d. Livestock operations.

e. Timber.

f. Minerals.

g. Cultural resources.

h. Authorized and potential land uses.

i. Management considerations including fire, insects and diseases, and presence of non-Federal lands.

4. *Wilderness Evaluation.* Summarize the factors considered and the process used in assessing the need for each area. Include the public involvement process (both past and present), assumptions made, the social and economic factors considered, and interest expressed by proponents, including Congress. Discuss nearby wildernesses and their uses, nearby roadless areas, distance from population centers, and use trends.

5. *Environmental Consequences.* Describe the potential environmental consequences of a wilderness and a nonwilderness recommendation.

a. Include a table displaying the acreage assignment of prescriptions by alternative as shown in exhibit 1.

b. Discuss the impact on the roadless area of wilderness designation and the impact of each nonwilderness prescription. Show the social and economic effects in each case. Include mitigation, if any, for loss of wilderness characteristics and the effects on plant and animal communities.

c. Exhibit 1 tracks roadless areas through each alternative considered in detail in the environmental impact statement.

EXHIBIT 1.—APPLICATION OF PRESCRIPTIONS TO ROADLESS AREAS BY ALTERNATIVE

Prescription	Alternatives				
	A	B	C	D	E
xx	10,200	0	20,400	0	0
	(50%)	0	(100%)	0	0
yy	0	20,400	0	0	0
	0	(100%)	0	0	0
zz	10,200	0	0	5,100	0
	(50%)	0	0	(25%)	0
aa	0	0	0	15,300	20,400
	0	0	0	(75%)	(100%)
Total	20,400	20,400	20,400	20,400	20,400

(1) Designation: Wilderness.
Prescription: xx.
Alternatives: A, C.
Describe:
Effects on wilderness attributes.
Effects on nonwilderness resources and uses.
Economic and social effects.

(2) Designation: Nonwilderness.
Prescription: yy.
Alternative: B.
Describe:
Effects on wilderness attributes.
Mitigation, if any.
Indicate if development is planned during the first 2 decades.
Effects on nonwilderness resources and uses.
Economic and social effects.

(3) Designation: Nonwilderness.
Prescription: zz.
Alternatives: A, D.
Describe:
Effects on wilderness attributes.
Mitigation, if any.
Indicate if development is planned during the first 2 decades.
Effects on nonwilderness resources and uses.
Economic and social effects.

(4) Continue through this discussion of environmental consequences for each prescription.

4.19d—Appendix B—Forest Service Response to Comments. The final environmental impact statement for the proposed forest plan must contain response to comments received on the draft environmental impact statement. The response may be in Appendix D or may be discussed in chapter 6 of the final EIS. Refer to 40 CFR 1503.4 and chapter 42.5 of FSH 1909.15 for treatment of comment.

4.2—FOREST PLAN OUTLINE. This outline represents the desired order of chapters and the desired order of sections within the chapter for the content of a forest plan. Regions may reorder chapters and sections within each chapter to meet current direction and/or to improve the document. Each section listed must be present in a plan. Regions may include or require additional sections and content as deemed necessary.

1. *Preamble.* The preamble to the forest plan includes a preface, table to contents, and a list of maps, tables, and figures.

a. *Preface.* The preface is a brief statement that relates the forest plan to applicable laws and regulations. Include the title and address of the Forest Supervisor as a source of information about the plan. The preface should include the following statement:

If any particular provision of this proposed action, or the application of the action to any person or circumstances, is found to be invalid, the remainder of the proposed action and the application of that provision to other persons or circumstances shall not be affected.

b. *Contents.* Include a standard table of contents and a list of maps, tables, and figures. The standardized arrangement of the table of contents follows the order in section 4.21 through section 4.27.

4.21—Chapter 1—Forest Plan Introduction. This chapter introduces the general purpose of the forest plan and the plan structure, and explains how the plan relates to the environmental impact statement and other documents. It also provides a brief description of the forest.

1. *Purpose of the Forest Plan.* The following text is suggested:

The Forest Plan guides all natural resource management activities and establishes management standards and guidelines for the _____ National Forest. It describes resource management practices, levels of resource production and management, and the availability and suitability of lands for resource management.

The Forest Plan embodies the provisions of the National Forest Management Act, the implementing regulations, and other guiding documents. Land use determinations, prescriptions, and standards and guidelines constitute a statement of the plan's management direction; however, the projected outputs, services, and rates of implementation are dependent on the annual budgeting process.

2. *Relationship of the Forest Plan to Other Documents.* The following text is suggested:

This Forest Plan sets forth the preferred alternative for managing the land and resources of the _____ National Forest. The Plan results from extensive analysis and considerations addressed in the accompanying environmental impact statement (EIS). The planning process and the analysis procedures used to develop this Plan are described or referred to in the EIS. The EIS also describes other alternatives considered in the planning process. Specific activities and projects will be planned and implemented to carry out the direction in this plan. The Forest will perform environmental analysis on these projects and activities. This subsequent environmental analysis will use the data and evaluations in the Plan and environmental impact statement as its basis. Environmental analysis of projects will be tiered to the EIS accompanying this Forest Plan.

3. *Plan Structure.* This section intruduces the reader to the interrelated purposes of the plan chapters 2 through 5.

4. *Forest Description.* This section describes the location of the forest. Include forest location maps showing national, regional, and local vicinity of the administrative unit covered by the plan. Place all three maps on a single page if possible.

4.22—Chapter 2—Summary of the Analysis of the Management Situation. This chapter of the plan briefly summarizes the supply and demand conditions for significant market and nonmarket goods and services associated with the planning area. Briefly describe special conditions affecting supply or demand.

1. *Resource Supply Conditions.* This section includes a summary display of the constrained maximum physical and biological production potentials for significant individual goods and services (maximum resource level benchmarks) identified in the analysis of the management situation (sec. 3.4). Also include displays of the production levels that are attainable under current management direction. Guidelines for each of the production levels are as follows:

a. Maximum Production Potential. The highest level of a particular output or use that it would be possible to produce over time considering legal and other requirements.

b. Production Under Current Management Direction (No-Action Alternative). The level of goods and services provided under current management direction, as constrained by current forest budgets, and the most likely level of goods and services expected to be provided under probable budgets if current management direction continues.

c. Use and Development Opportunities. The opportunities available to permit and promote use and development of the various resources, including land status and adjustment situations.

2. *Resource Demand Projections.* In this section include a summary display of projected demands for the significant goods and services addressed in the Analysis of the Management Situation. Display both supply and demand conditions for each of the National Recourses Planning Act planning periods. All of the above mentioned supply and demand condition levels may be contained in a single table.

3. *Research Needs.* This section addresses the research needs identified by the Forest Supervisor. In the proposed plan, they are considered as research proposals subject to the approval of the Regional Forester. Point out in the final plan that the set of research needs may expand if monitoring and evaluation identify additional needs.

4.23—Chapter 3—Response to Issues, Concerns, and Opportunities. Include this chapter in the forest plan if it is necessary to discuss information not included in the environmental impact statement (EIS). If not, incorporate the discussion in the EIS by reference.

4.24—Chapter 4—Forest Management Direction. This chapter presents the management goals, objectives, standards and guidelines that constitute direction for resource management covered by the plan. Ensure that appendices prepared do not include direction, but supplement, clarify, and support forest management direction.

4.24a—Forest Management Goals. Present the multiple use and other goals established in the planning process to develop the preferred alternative. Include any other goals that are part of the definition of management direction.

4.24b—Forest Management Objectives. In this section, list the overall objectives in narrative form, explain how the projected outputs also serve as objectives, and introduce resource summaries.

1. *Projected Outputs.* Display the levels of goods and services anticipated as the plan is implemented. Clarify the fact that outputs are projections based on available inventory data and assumptions, subject to the annual budget. Display these outputs in a chart that shows how they vary during five planning decades. Express outputs on an average annual yield per decade basis; use NAS codes and definitions whenever possible.

2. *Resource Summaries.* Prepare narrative summaries of resource outputs and schedules for attainment. Supplement the narrative statements with charts and tables as indicated.

a. Include timber resource summaries that describe timber productivity, land suitability, allowable sale quantity, vegetation management practices, and planned timber sales. See FSH 2409.13, Timber Resource Planning Handbook for additional information.

b. Present other resource summaries and schedules for activities such as wildlife and fisheries habitat improvement, road construction, range improvements, vegetation burning, and other capital investments. Include the detailed schedules as appendices to the plan. It is suggested that these schedules cover the same timeframe as the planned timber sales schedule.

4.24c—Standards and Guidelines Forest-wide standards and guidelines state the bounds or constraints within which all practices are to be carried out in achieving the planned objectives. Standards and guidelines should be

measurable to be meaningful. List the forest-wide management standards and guidelines that are applicable to all management areas. Then list those that are applicable only to specific management areas.

4.24d—Desired Future Condition of the Forest. The future condition of the forest is as much a part of management goals and objectives as are outputs and effects. This section on the desired condition describes what the forest should be like after implementation of the management direction contained in the plan. It summarizes the anticipated physical changes that would result from carrying out planned management practices. Emphasize what the physical structure of the forest would be at the end of 10 years, at the end of 50 years, and beyond, as appropriate, especially when the management plan calls for departures from the base timber sale schedule. Examples of the physical structural components include stand composition and age structure, miles of road, acres of roadless area, numbers and kinds of facilities, acre-feet of water produced, and other dimensions as appropriate.

4.24e—Management Prescriptions. This section contains the management prescriptions and the standards and guidelines that apply to each management area. Management prescriptions are management practices scheduled for implementation on a defined management area.

1. Describe management prescriptions in a standard format and include the alpha-numeric code associated with the prescription in the planning process.

2. List the probable management practices constituting each management prescription. Use NAS codes and definitions of management practices to simplify the formulation of annual program budgets.

3. For prescriptions that involve vegetation manipulation, indicate how and why these prescriptions are associated with the various vegetative types manipulated on the forest. State the objectives of the prescription or set of prescriptions and the desired results as applied to a given vegetative type.

4. Address access management in each management area and further refine it in the standards and guidelines. Where necessary, establish direction to define the way access is provided and managed to meet access goals. Access direction should include all modes of transportation, timing of necessary actions, and the mix of facility management objectives needed to meet forest plan goals.

5. Write standards and guidelines for each management area to meet the requirements of 36 CFR 219.11(c). In addition, address each of the resources discussed in 36 CFR Part 219.13 through 219.26 by standards and guidelines, management prescriptions, or other management direction in the plan if significant on the forest. The resource integration requirements are often synonymous with the managment standards and guidelines they are to be associated with.

6. Write direction for any proposed special areas (wilderness, wild and senic rivers, national trails, research natural areas, national recreation areas, and national forest monuments) as if they are already designated special areas. Existing and proposed special areas may be defined as individual management areas, as parts of other management areas, or as a combination of several management areas when they are very large and when internal management needs vary significantly from location to location. Direction for existing special areas may be incorporated by reference, indicating the process by which the existing direction was developed.

4.25—Chapter 5—Implementation of the Forest Plan. This chapter incorporates direction in three sections under the headings of Implementation Direction, Monitoring and Evaluation Program, and Amendment. Collectively, these sections explain methods of implementing management direction, monitoring and evaluating implementation activities, and of keeping the plan current in light of changing conditions or other findings. See chapter 5 of this handbook for further discussion of the process for forest plan implementation. See chapter 6 for a discussion of monitoring and evaluation.

4.25—Implementation Direction. Explain that implementation of the forest plan occurs through identification, selection, scheduling, and execution of management practices to meet management direction provided in the plan. Implementation also involves responding to proposals by others for use and/or occupancy of National Forest System lands. Additional requirements of this section include a need to show consistency of other plans or instruments with the forest plan, formulation of budget proposals, and environmental analysis required for implementation of specific management practices.

1. *Scheduling.* The identification and selection of management practices must meet the requirements of FSM 1922.4 and chapter 5 of this handbook. Scheduling of the practices is in response to the management direction in the forest plan and the near-term management needs and opportunities. Additional requirements for timber sale scheduling is found in FSH 2409.13. Execution is in response to the annual budget.

2. *Consistency with Other Instruments.* This section of the forest plan sets a target date for achieving consistency, subject to valid existing rights, for all outstanding and future permits, contracts, cooperative agreements, and other instruments for occupancy and use of lands included in the forest plan. In an appendix, list plans that the forest plan supersedes or that must come into compliance with the forest plan.

3. *Budget Proposals.* This section of the forest plan translates scheduled practices into multiyear program budget proposals. Use the schedule for requesting and allocating the funds needed to carry out the planned management direction. The plan should state that, upon approval of a final budget, the forest finalizes and implements the annual program of work. Accomplishment of the annual program of work results in the incremental implementation of the management direction of the forest plan.

4. *Environmental Analysis.* This section of the forest plan indicates that management practices proposed within the forest plan are subject to environmental analysis as they are planned for implementation. Follow the requirements of 40 CFR 1502.20, FSM 1950, and FSH 1909.15 in determining subsequent environmental analysis and documentation. An analysis file and/or a project file must be available for public review, but it is not always necessary to document the analysis in the form of an environmental assessment or environmental impact statement.

4.25—Monitoring and Evaluation Process. This section of the forest plan describes how the forest is to meet monitoring and evaluation requirements. Refer to chapter 6 of this handbook for a discussion of the monitoring and evaluation process.

1. *Monitoring*—Identify the monitoring program necessary to meet the minimum requirements of 36 CFR 219.5(a)(7), 219.11(d), and 219.12(d) and (k) as well as any additional monitoring needs. Describe the monitoring activities and methods that are to satisfy the identified monitoring requirements. State the actions, effects, or resources to be measured and the frequency of measurement for each of these,

including the periodic intervals between measurements and the sampling schemes. Estimate the procision and reliability of the monitoring program. Identify ongoing accomplishment reporting processes, such as PAMARS and annual attainment reports, used to monitor actions, effects, and/or resources.

2. *Evaluation.* Identify the evaluation program necessary to meet the minimum requirements of 36 CFR 219.12(k)(1), (2), (3), and (5); 219.10(e) and (g); and 219.7(f).

4.25c—Amendment. This part of the forest plan describes the opportunities and procedures for amendment of the plan. Refer to chapter 5 of this handbook for a discussion of the amendment process.

4.26—Glossary. This section contains forest plan terms that require common understanding or that have special meanings. Include those terms in 36 CFR 219.3 that you use in the plan along with their given definitions.

4.27—Appendices. This part of the forest plan contains supplemental plan information that is explanatory in nature. Appendices may include management area maps, timber sale schedules, and other activity schedules and costs as appropriate.

4.3—RECORD OF DECISION. The Council on Environmental Quality regulations for implementing the National Environmental Policy Act require a Federal agency to prepare a concise public record of decision whenever the agency undertakes an action requiring an environmental impact statement. The purpose of the record of decision is to describe a rational basis for the decision. Because this record is often the first document read by the public, by the reviewing officer in an administrative appeal under 36 CFR 211.18, or by a judge in a lawsuit, write it in non-technical language. The record of decision is the primary document that summarizes a basis and need for the decision; it thereby allows the reader to decide whether the agency made a reasoned choice among the alternatives.

1. Make the record of decision brief. To avoid unnecessary repetition, refer to specific pages of the plan and final environmental impact statement whenever possible. The record of decision can also serve as an index to those two documents for particular subjects, facilitating the public's use and understanding of them.

2. Inform the readers of how to get copies of any forthcoming amendments and revisions of the plan.

Contents of a record of decision are set forth in section 4.31 through 4.37. The order in which the contents are listed in these sections can be changed; topics may also be combined as long as the requirments of 40 CFR 1505.2, FSM 1950, and FSH 1009.15 are met.

4.31—Table of Contents. A table of contents or outline helps the reader locate subjects of particular interest and to understand how the record of decision is organized. If the record consists of only a few pages, bold headings and subheadings, indentation, and so forth, may suffice.

4.32—The Decision. State the decision to be made. Describe what is being decided and what is not being decided. Establish the management framework of which the plan is a part. Include an explanation of what the plan is and is not, similar to that in exhibit 1. Add specific comments unique to the particular plan.

Exhibit 1

Sample Introductory Paragraphs for the Record of Decision

The forest plan is a strategy for managing the forest. It is not a plan for the various administrative activities needed to carry on the Forest Service's day-to-day internal operations. For example, the plan does not address personnel matters, law enforcement, fleet equipment, or internal organization changes. However, it is a plan for managing unit of the National Forest System in an environmentally sound manner to produce goods and services in a way that maximizes long-term public benefits.

The plan is part of the 50-year framework for long-range resource planning established by the Forest and Rangeland Renewable Resources Planning Act (RPA). As such, it establishes general direction for a period of time, usually between 10 and 15 years. Information regarding outputs and effects beyond this period are provided only to broadly indicate the currently anticipated consequences of each plan alternative if it is selected to continue into the future. However, the plan must be revised at least every 15 years. Once adopted, the plan replaces all previous resource management plans prepared for the forest, subject to existing rights, contracts, and specific direction for special areas such as wilderness, wild and scenic rivers, national recreation areas, and national trails.

The emphasis of the plan is not on site-specific decisions or specific resource outputs. Rather, the emphasis is on applying various general management practices at various intensities to areas of land to achieve multiple-use goals and objectives in the most cost efficient manner. To respond to changing needs and opportunities, Congressional land designations, catastrophic events, or major new management or production technologies, the plan may have to be amended or revised. If there is a significant change to the plan, it must be altered by a procedure identical to that used in the development and approval of the original plan. If the change does not significantly affect the plan, the Forest Supervisor may amend it by a less extensive procedure to include public notification.

It is important to note that all proposals in the plan can be accomplished from a physical, biological, economic, and legal perspective. It is not certain that these proposals will be accomplished. First, the outputs proposed by the plan are projections or targets. For example, the number of acre-feet of water meeting water quality goals is a target number the forest will strive to attain. Another example is allowable sale quantity of timber. That is the maximum regulated volume of timber that can be sold over the planning period, not necessarily the volume that will be sold.

Secondly, all activities, many of which are interdependent, may be affected by annual budgets. The plan is implemented through various site-specific projects, such as the building of a road, development of a campground, or the sale of timber. If the budget changes for any given year covered by the plan, the projects scheduled for that year may have to be rescheduled. However, the goals and land activity assignments described in the plan would not change unless the plan itself were changed. If budgets change significantly over a period of several years, the plan itself may have to be amended and, consequently, would reflect different target outputs and environmental conditions. The significance of budget related or other changes is determined in the context of the particular circumstances.

As a long-range strategy for the forest, this plan and accompanying environmental impact statement are programmatic. During implementation, when the various projects are designed, more site-specific analyses are performed. These analyses may result in environmental assessments, environmental impact statements, or categorical exclusions and, possibly, an amendment or revision of the plan. Any resulting documents are to be tiered to the final environmental impact

statement for this plan, pursuant to 40 CFR 1508.28.

4.33—Alternatives and Issues Considered. Describe concisely all major issues identified in the draft environmental impact statement and note new issues identified from public comments on the draft statement. Summarize all alternatives considered, referring to the more detailed descriptions in the final environmental impact statement when appropriate. In this discussion, it is appropriate to summarize or emphasize public involvement and to describe how any alternatives from the draft environmental impact statement changed because of this involvement. Also, note new alternatives developed for the final environmental impact statement as a result of public input. Refer to the comments/response appendix and chapter 2 in the final EIS for details on responses to alternatives and issues from the draft.

4.34—Rationale for the Decision. Briefly describe management concerns and all factors (economic, technical, national policy, and so forth), regulations, and laws relevant to the decision. Describe the methods used to consider the various issues and interests and how they balanced with all other factors, laws, and regulations. Explain that the companion document to the plan, the final environmental impact statement, discloses the environmental effects of all alternatives considered, including the preferred alternative. Where appropriate to explain the rationale, refer to specific pages of the EIS. A reviewing court is likely to want to know whether the agency took a "hard look" and made a "reasoned choice." The following elements are mandatory in this section:

1. *Environmentally Preferable Alternatives.* (40 CFR 1505.2(b)). This section requires the identification of the environmentally preferable alternative but does not require its selection. More than one such alternative may be described. Identify as environmentally preferable the alternative(s) having the least impact on the physical and biological environment; give secondary consideration to the impact on the economic and social environment. The Council on Environmental Quality has defined "environmentally preferable" as follows:

> The environmentally preferable alternative is the alternative that will promote the national environmental policy as expressed in NEPA's section 101. Ordinarily, this means the alternative that causes the least damage to the biological and physical environment; it also means the alternative which best protects, preserves, and enhances historic, cultural, and natural resources.

After identifying the environmentally preferable alternative(s), compare the selected alternative, which maximizes net public benefits (36 CFR 219.1 (a), 219.3 and 219.12 (f)), to any other alternative(s) considered and identified as environmentally preferable. This comparison is required by 36 CFR 219.12 (j)(1). The comparison can be made by summarizing:

a. A description of the difference between the environmental effects or outputs that are likely to occur with implementation of environmentally preferable alternatives and the environmental effects or outputs anticipated with implementation of the selected alternative.

b. The objectives of the selected alternative in terms of priced and nonpriced outputs and/or responses to expressed public issues that would not be likely to occur with implementation of the environmentally preferable alternative(s).

c. A summary of the major tradeoffs or differences between a and b, expressed in economic, environmental, physical, and/or other appropriate quantitative and qualitative terms.

d. An explanation showing why the selected alternative is expected to provide greater overall net public benefits than the environmentally preferable alternatives.

Refer to the final environmental impact statement where appropriate. In this section of the record of decision, note that all alternatives meet minimum legal and environmental standards, but acknowledge and discuss any environmental uncertainties.

2. *Alternatives with Higher Present Net Values.* Identify the present net value (PNV) of the selected alternative. Then, as provided by 36 CFR 219.12 (j)(2), compare the selected alternative to all other alternatives having a higher PNV. This requires summarizing:

a. A description of the difference between the net value and mix of the priced outputs that are likely to occur with implementation alternatives having a higher PNV and the net value and mix of the priced outputs anticipated with implementation of the selected alternative.

b. The objective of the selected alternative in terms of priced and nonpriced outputs and/or responses to expressed public issues that would not be likely to occur with implementation alternatives having a higher implemented.

c. A summary in the record of decision of the major tradeoffs of differences between a and b expressed in economic, environmental, physical, and/or other appropriate quantitative and qualitative terms.

d. An explanation showing why the selected alternative is likely to provide greater overall net public benefits than the alternatives with a higher PNV.

3. *Areas of Public Interest.* Identify all areas that have a high degree of public interest and briefly describe how the plan proposes to deal with them. For example, if management of a wilderness with respect to visitor intensity or any other significant aspect is to be different from management prior to the forest plan, describe these differences. Explain why a particular roadless area was or was not recommended for wilderness designation, is or is not to be scheduled for timber sales, and so forth.

4.35—Mitigation and Monitoring. Mitigation measures are an essential part of each alternative and, consequently, require detailed description in chapter 4 of the environmental impact statement. Refer to the mitigation measures, the minimum management requirements, the standards and guidelines applicable to the entire forest, and specific management prescriptions in the plan. If all practicable measures were not taken, explain why not (40 CFR 1505.2(c)). The Council on Environmental Quality (CEQ) states in response to the 40 most asked questions concerning NEPA regulation (46 FR 18026, March 23, 1981):

> The discussion of mitigation and monitoring in a Record of Decision must be more detailed than a general statement that mitigation is being required, but not so detailed as to duplicate discussion of mitigation in the EIS. The Record of Decision should contain a concise summary identification of the mitigation measures which the agency has committed itself to adopt.

CEQ continues:

> To ensure that environmental effects of a proposed action are fairly assessed, the probability of the mitigation measures being implemented must also be discussed. Thus the EIS and the Record of Decision should indicate the likelihood that such measures will be adopted or enforced by the responsible agencies.

Briefly describe the monitoring program and its purpose. State that the Forest Service uses the data gathered by the program to update its inventory data, to improve future mitigation measures, and to assess the need for amending or revising the plan.

4.36—Implementation. Briefly describe any schedules used to implement the plan and note how often they are to be updated (FSM 1922.51).

Emphasize any aspects of implementation that received special public attention or that require clarification. The record of decision affords one more opportunity to speak to the public to clarify issues and eliminate any confusion about the plan or its implementation. Be sure to refer to the most recent regional or national policy on below-cost timber sales and note the differences between sales policy and suitability determination if applicable.

4.37—Appeal Rights. State appeal rights and associated time periods. In accordance with 40 CFR 1506.10(b)(2) and 36 CFR 221.18(c)(3), the appeal period for approval of the land and resource management plan cannot expire prior to the later of the following two dates:

1. Thirty days after publication by the Environmental Protection Agency of the Notice of Availability of the Final environmental impact statement accompanying the plan.

2. Forty-five days from the date of decision.

The discussion of appeal rights is also an appropriate place to clarify areas of confusion regarding appeals and their consequences. For example, consider addressing the following:

1. An appeal of a plan does not halt its implementation. A stay does.

2. If an individual or group is dissatisfied with a specific project, that individual or groups should appeal the plan if the site-specific decision for that project is made in the plan. Otherwise, they should appeal the site-specific decision.

3. If applicable, note the appeal rights of (mineral) operators under 36 CFR 228.14 or other avenues of appeal (36 CFR 211.18 (b)).

4.38—Approval. The Regional Forester signs and dates the record of decision.

Chapter 5—Forest Plan Implementation and Amendment Process

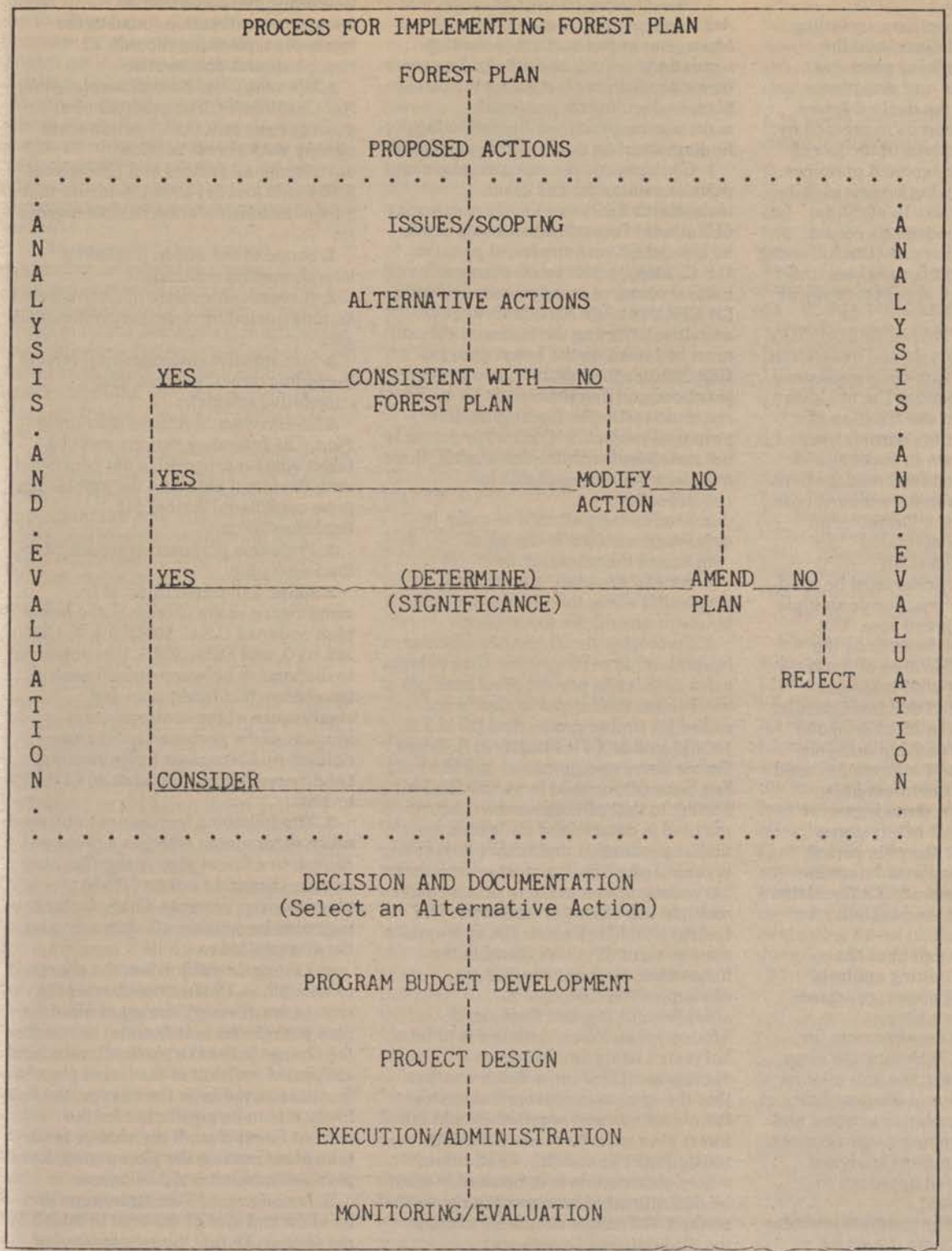
Contents

5.1 PURPOSE OF FOREST PLAN IMPLEMENTATION
5.2 PROPOSED PROJECT AND ACTIONS
5.3 ANALYSIS AND EVALUATION
5.31 Findings
5.31a National Forest Management Act Findings
5.31b National Environmental Policy Act Compliance
5.32 Process to Amend the Forest Plan
5.4 DECISION AND DOCUMENTATION
5.5 BUDGET DEVELOPMENT
5.6 PROJECT DESIGN
5.7 PROJECT EXECUTION AND ADMINISTRATION

This chapter establishes procedural guidance for implementing the forest plan through selecting and scheduling management practices that meet direction established by the forest plan. This chapter describes the process for analyzing and determining consistency of actions with the forest plan and specifies the process for amending the forest plan when change is necessary. Overall direction for forest plan implementation isn in FMS 1922.4 while forest plan amendment is described in FMS 1922.5.

5.1—PURPOSE OF FOREST PLAN IMPLEMENTATION. Forest plan implementation, the activity to accomplish the management direction of a forest plan, is necessary to meet legal requirements and public expectations of Forest Service actions. It is accomplished through identification of management practices; analysis and evaluation of proposed actions; deciding upon and appropriate course of action; and budget development, project execution, and administration. Implementation involves analysis of proposed and probable management practices to meet both NFMA and NEPA requirements. The process of implementing the forest plan is shown in exhibit 1. Although the process is depicted as sequential, activities may be simultaneous or iterative. A discussion of the major actions in the forest plan implementation process follows the exhibit.

BILLING CODE 3410-11-M



BILLING CODE 3410-11-C

5.2—PROPOSED ACTIONS. Management prescriptions, including standards and guidelines, and the schedule of management practices provide information and direction needed to achieve the desired future condition of the forest as expressed by the goals and objectives of the forest plan. Proposed management practices are identified following review of this management direction. In addition, actions may be proposed by others outside the Forest Service. The following specifies the process for analysis and evaluation to select, approve, or reject proposed actions.

5.3—ANALYSIS AND EVALUATION. The purpose of analysis and evaluation is to make site specific decisions based on Forest Plan direction. The analysis process includes an assimilation of management direction, current issues, and site-specific data to make site specific decisions on land management. Th analysis assists in determining costs, schedules, and direct, indirect, and culmulative effects of related management practices. An interdisciplinary process must be used to address a single practice or multiple practices within a given area. The responsible official determines the scope and geographic area of analysis required to reach a well-reasoned decision on proposed actions. Consider the following steps in identifying the scope and area involved in analysis:

1. Review data and information used in development of the forest plan;
2. Consider the land management decisions to be made in any given geographic area for the plan period;
3. Conduct scoping and determine issues, concerns, and other information about the area and the possible decisions to be made;
4. Determine the extent of the geographic area requiring analysis based on identified issues, concerns, and resource opportunities;
5. Determine the requirements for NEPA compliance, including the range of alternative actions, the potential for cumulative effects, and the possibility of connected and cumulative actions; and
6. Ensure that proposed management practices and actions are analyzed through an integrated approach to resource management.

5.31—Findings. The analysis provides information to evaluate proposed management practices and actions, whether Forest Service or non-Forest Service proposals, to determine findings for NFMA, to ensure compliance with NEPA, and to meet other appropriate laws and regulations. Review of the findings is essential in making a well-reasoned decision.

5.31a—National Forest Management Act Findings. The National Forest Management Act and implementing regulations require specific findings to be made when implementing the forest plan. In deciding on proposed management practices, the following findings must be made and documented.

1. *Consistency.* All resource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands are to be consistent with the forest plan (16 U.S.C. 1604(i)). The forest plan guides all natural resource management activities (36 CFR 219.1(b)). All administrative activities affecting the National Forest must be based on the forest plan (36 CFR 219.10(e)). Thus, all management practices and activities must be consistent with the forest plan. If a proposed project or alternative action is not consistent with the forest plan, there are three options available for consideration:

a. Modify the proposal to make it consistent with the forest plan;
b. Reject the proposal; or
c. Amend the plan to permit the proposal. Follow the direction in 5.32 below to amend the forest plan.

2. *Suitability for Timber Production.* No timber harvesting, other than salvage sales or sales to protect other multiple-use values, shall occur on lands not suited for timber production (16 U.S.C. 1604(k) and 36 CFR 219.27(c)(1)). When timber harvest is proposed and the land has been determined to be suitable, a finding to that effect must be made. If the land is determined not suited for timber production and timber harvesting is proposed, a finding must ensure that harvesting is necessary to protect other multiple use values or activities. The finding should reference the appropriate management direction found in the forest plan, planning records, or environmental documents.

3. *Clearcutting and Even-aged Management.* When a timber is to be harvested using an even-aged management system, a determination that the system is appropriate to meet the objectives and requirements of the forest plan must be made (16 U.S.C. 1604(g)(3)(F) (i) and (ii)). In addition, where clearcutting is to be used, it must be determined to be the optimum method. Reference should be made to the discussions of even-aged management contained in the forest plan, planning records, or environmental documents.

4. *Vegetative Manipulation.* All proposals that involve vegetative manipulation of tree cover for any purpose must comply with the seven requirements found at 36 CFR 219.27(b). Reference the discussion or management direction found in the forest plan, planning records, or environmental documents.

5.31b—National Environmental Policy Act Compliance. The analysis of a management practice or action must comply with Forest Service environmental polices and procedures (FSM 1950 and SH 1909.15). Insure that adequate consideration has been given to:

1. Scope of the action (including interconnected actions);
2. A reasonable range of alternative actions (including necessary mitigation); and
3. Site specific environmental effects (including direct, indirect, and cumulative effects).

5.32—Process to Amend the Forest Plan. The following actions must be taken when a proposal is not consistent with the forest plan and the proposal is to be considered further for implementation.

1. Prepare a proposed amendment to the forest plan.
2. Make a determination of the significance of the change to the forest plan under 16 U.S.C. 1604(f)(4), 36 CFR 219.10(f), and FSM 1922.5. It is important to distinguish between significance of the change to a forest plan and significance of the environmental impacts of the proposed action as defined by Council on Environmental Quality regulations found at 40 CFR 1500 to 1508.
3. The following factors are to be used when determining whether a proposed change to a forest plan is significant or not significant, based on NFMA planning requirements. Other factors may also be considered, depending on the circumstances.

a. *Timing.* Identify when the change is to take place. Determine whether the change is necessary during or after the plan period (the first decade) or whether the change is to take place after the next scheduled revision of the forest plan. In most cases, the later the change, the less likely it is to be significant for the current forest plan. If the change is to take place outside the plan period, forest plan amendment is not required.

b. *Location and Size.* Determine the location and size of the area involved in the change. Define the relationship of the affected area to the overall planning area. In most cases, the smaller the area affected, the less likely the change is to be a significant change in the forest plan.

c. *Goals, Objectives, and Outputs.* Determine whether the change alters long-term relationships between the

levels of goods and services projected by the forest plan. Consider whether an increase in one type of output would trigger an increase or decrease in another. Determine whether there is a demand for goods or services not discussed in the forest plan. In most cases, changes in outputs are not likely to be a significant change in the forest plan unless the change would forego the opportunity to achieve an output in later years.

d. *Management Prescription.* Determine whether the change in a management prescription is only for a specific situation or whether it would apply to future decisions throughout the planning area. Determine whether or not the change alters the desired future condition of the land and resources or the anticipated goods and services to be produced.

4. If the amendment is determined not to be a significant change to the forest plan, the Forest Supervisor may implement the amendment following appropriate public notification and satisfactory compliance with Forest Service environmental policies and procedures for the project or action.

5. If the change to the forest plan is determined to be significant, follow the required 10 step planning process found at 36 CFR 219.12. Preparation of an environmental impact statement (EIS) is mandatory (16 U.S.C. 1604(f)(4), 36 CFR 219.10(f), and 36 CFR 219.12). The Forest Supervisor shall determine the issues, concerns, and opportunities to be addressed in the amendment and will normally concentrate on those issues that have generated the need for change.

5.4—DECISION AND DOCUMENTATION. The analysis and evaluation of management practices and actions provide information and findings for reaching a well reasoned decision. Decisions made following analysis must be documented to: provide a public record; facilitate public notification; explain the rationale for selection of an action; and document the findings addressed above at 5.31. The process depicted in exhibit 1 is not precise in either the order or timing of events it predicts. Discretion must be used in determining consistency with and the need to change the forest plan. The following is required.

1. In order to assure the responsible official and the public that all actions are consistent with the forest plan, a finding of consistency must be a part of each decision document. The finding must indicate consistency with the general management requirements of the forest plan (36 CFR 2319.27), as well as indicating consistency with the specific standards and guidelines. This finding need not be lengthy or detailed, but should beiefly state why the proposed action is consistent with the particular management direction or requirements of law or regulation. The finding should include appropriate references to the pages in the forest plan, planning records, or environmental documents used in making the consistency determination. This finding is an appealable decision (36 CFR 211.18).

2. In the case of a change to the forest plan that is determined not to be significant, the Forest Supervisor documents the decision in the appropriate document and at the same time, if the activity is approved, amends the forest plan and implements the project or activity following appropriate public notification. Once the amendment is approved, permanently attach a copy of the amendment to all reference copies (36 CFR 219.6(i)(3)) of the forest plan. This finding is an appealable decision (36 CFR 211.18).

3. In the case of a change to the forest plan that is determined to be significant, follow the same procedure required for development of a forest plan (36 CFR 219.10(f)). Prepare a record of decision that accompanies the final environmental impact statement and address both the project and the change to be made to the forest plan. The decision is appeable (36 CFR 211.18) once the Regional Forester has signed the record of decision. When 45 days have elapsed since signing the record of decision, the forest plan is amended and the project or activity may be implemented.

4. Instructions for documentation necessary to comply with Forest Service environmental policies and procedures are found in FSM 1950 and FSH 1909.15.

5.5—BUDGET DEVELOPMENT. The selected projects and actions are the basis for program budget development. Policy contained in FSM 1930.3 requires that budget proposals be consistent with long-range direction provided by, among others, the forest plan. Follow procedures established in FSH 1909.13, The Program Development and Budgeting Handbook, for budget development.

5.6—PROJECT DESIGN. Project design is a process for developing detailed project plans, specifications, instructions, and cost estimates for selected actions. During field work for project design, mitigating measures directed by environmental analysis must be incorporated.

5.7—PROJECT EXECUTION AND ADMINISTRATION. Administer project execution to ensure that projects are completed as designed. Document any changes made during execution to ensure there is a complete project history. Use monitoring and evaluation techniques described in chapter 6 to provide feedback on forest plan implementation.

Chapter 6—Forest Plan Monitoring and Evaluation Process

Contents

6.02 Objectives
6.03 Policy
6.04 Responsibility
6.04a Regional Foresters
6.04b Forest Supervisors
6.06 References
6.1 MONITORING LEVELS
6.11 Implementation Monitoring
6.12 Effectiveness Monitoring
6.13 Validation Monitoring
6.2 MONITORING REQUIREMENTS
6.21 Monitoring Required by NFMA Regulations
6.3 EVALUATION OF MONITORING RESULTS
6.31 Evaluation Techniques
6.32 Evaluation in Relation to the Three Monitoring Levels
6.32a Implementation Monitoring Results
6.32b Effectiveness Monitoring Results
6.32c Validation Monitoring Results
6.33 New Assumptions, Coefficients or External Changes

Monitoring and evaluation are separate, sequential activities that provide information to determine whether programs and projects are meeting forest plan direction. Monitoring collects information, on a sample basis, from sources specified in the forest plan. Evaluation of monitoring results is used to determine the effectiveness of the forest plan and the need to either change the plan through amendment or revision or to continue with the plan. This chapter establishes procedural guidance for monitoring and evaluating forest plans. Overall direction is found in FSM 1922.7 and 36 CFR 219.12(k).

6.02—Objectives. The overall objective of monitoring and evaluating forest plans is to determine whether programs and projects are meeting forest plan direction. Within this broad objective, specific goals are to:

1. Ensure that forest plan goals and objectives are being achieved and management prescriptions are being implemented as directed.

2. Determine if the costs of implementing the plan and the management effects are occurring as predicted.

6.03—Policy

1. Ensure that the intensity of monitoring is commensurate with the risks, costs, and values involved in meeting plan objectives through resource management.

2. Use the formal management review system in FSM 1400 as an approach to evaluate overall effectiveness of forest plan monitoring.

3. Involve the public and other agencies as appropriate in the monitoring process.

6.04—Responsibility

6.04a—Regional Foresters. It is the responsibility of the Regional Forest to:

1. Ensure forest-level commitment to monitoring and evaluation of forest plan implementation.

2. Ensure the distribution of those monitoring and evaluation results that hve application to other Forests.

3. Use accumulated results or monitoring and subsequent evaluations as the basis for amending regional guides.

6.04b—Forest Supervisors. Forest Supervisors are responsible for ensuring that the forest plan contains a monitoring and evaluation program as part of plan implementation and for overseeing monitoring and evaluation.

6.06—References. The following Department and Forest Service Handbooks provide direction and standards to guide monitoring:

1. FSH 2109.14, Air Resources Management Handbook
2. FSH 2209.11, Range Project Effectiveness Analysis Handbook
3. FSH 2409.13, Timber Resource Planning Handbook
4. FSH 2509.15, Watershed Improvement Handbook
5. FSH 2509.16, Water Resource Inventory Handbook
6. FSH 2509.18, Soil Management Handbook
7. FSH 2809.12, Minerals Planning Handbook
8. FSH 2809.13, Minerals Program Handbook
9. FSH 7109.52, Engineering Activities Evaluation Handbook
10. USDA Handbook 434, National Forest Landscape Management
11. USDA Handbook 462, The Visual Management System
12. USDA Handbook 478, National Forest Landscape Management—Utilities
13. USDA Handbook 484, National Forest Landscape Management—Range
14. USDA Handbook 483, National Forest Landscape Management—Roads
15. USDA Handbook 559, National Forest Landscape Management—Timber
16. USDA Handbook 608, National Forest Landscape Management—Fire
17. USDA Handbook 617, National Forest Landscape Management—Ski Areas

In addition to the preceeding Service-wide Handbooks, there are regional and forest-level handbooks in the resource areas that may contain direction and standards relevant to monitoring.

6.1—MONITORING LEVELS. There are three distinct levels of monitoring: (1) implementation monitoring, (2) effectiveness monitoring, and (3) validation monitoring. These levels are defined in FSM 1922.7. Exhibit 1 provides examples of each level.

BILLING CODE 3410-11-M

EXHIBIT 1

MONITORING PROCESS WITH EXAMPLES FOR PROJECT MONITORING

FOREST PLAN	PROJECT ACTION	IMPLEMENTATION MONITORING	EFFECTIVENESS MONITORING	VALIDATION MONITORING
Items to Monitor 1 Objectives 2 Standards and Guidelines 3 Minimum Mgt Requirements These are established to meet goals, policy and regulations	Prescribe site specific methods, practices, objectives, and design to carry out forest plan	Determine if plans and prescriptions are implemented as designed	Determine if implemented plans and prescriptions achieve objectives, stan- and guidelines, and other requirements	Determine if objectives, standards and guidelines, and other requirements meet regulations, goals, and policy
ITEMS TO MONITOR:	PROJECT STANDARD:	QUESTIONS TO BE ANSWERED AT EACH LEVEL OF MONITORING:		
Keep erosion within soil T-factors to maintain soil productivity	Prescribed mechanical site preparation Brush chop on contour	Was site preparation carried out according to prescription?	Was erosion rate within tolerance as a result of prescribed practice?	Are tolerance factors sufficient to maintain productivity?
Use 2 step shelterwood on 80% of Ponderosa stands The objective is to provide stand variety for wildlife and visual	Use 2 step shelter-wood on stands 1 thru 8 Clearcut stands 9 and 10	Was harvesting accomplished according to plan?	Did harvest methods provide the expected stand variety?	Did the resulting stand variety provide adequate wildlife habitat and maintain visual quality
Maintain 10% shade over perennial stream to maintain water temp for trout	Limit harvesting trees within 15 feet of the stream	Were cutting restrictions adhered to according to Plan?	Did the prescribed practice(s) provide 10% shade?	Is 10% shade adequate to maintain water temperature within limits for trout?
BMPs to limit sediment yield to meet State and Federal Water Quality Goals for beneficial uses	Set site-specific 1 Mgt practices (BMPs) to match site capability 2 S&W cons practices 3 Mitigation measures	Were BMPs, prescriptions, and measures implemented as designed?	Did BMPs limit sediment yield as expected?	Were sediment limits or surrogates to meet water quality goals (that BMPs were designed for) appropriate to protect beneficial uses
Maintain a minimum of 80% of the pre-disturbance population of primary excavators woodpeckers	Leave minimum of 4 snags per acre	Were a minimum of 4 snags per acre left following the disturbance?	Did at least 80% of the predisturbance population remain following the disturbance?	Did maintaining 80% of the predisturbance population result in a viable population?

BILLING CODE 3410-11-C

6.11—Implementation Monitoring. Forest and Ranger District personnel conduct implementation monitoring as part of their routine assignments and document the results in project files as part of their management responsibilities. Use implementation monitoring to determine if plans, prescriptions, projects, and activities are implemented as designed and in compliance with forest plan objectives and standards and guidelines.

6.12—Effectiveness Monitoring. Effectiveness monitoring determines if plans, prescriptions, projects, and activities are effective in meeting management direction, objectives, and the standards and guidelines. This level of monitoring is conducted by resource and/or technical specialists on a limited basis as determined by resource values and risks, and public issues. Begin effectiveness monitoring only after determining that the plan, prescription, project, or activity to be monitored has been implemented according to the plan's direction.

6.13—Validation Monitoring. Validation monitoring determines whether the initial data, assumptions, and coefficients used in development of the plan are correct; or if there is a better way to meet forest planning regulations, policies, goals, and objectives. Conduct validation monitoring when effectiveness monitoring results indicate basic assumptions or coefficients are questionable. Generally, conduct validation monitoring by establishing permanent plots or studies in close coordination with research personnel. Limit the scope of validation monitoring to those coefficients and standards that are not reasonably substantiated by existing research.

6.2—MONITORING REQUIREMENTS

6.21—Monitoring Required by NFMA Regulations. The planning regulations at 36 CFR Part 219 require monitoring to:

1. Compare planned versus applied management standards and guidelines to determine if objectives are achieved (36 CFR 219.12(k)).

2. Quantitatively compare planned versus actual outputs and services (36 CFR 219.12(k)(1)).

3. Measure effects of prescriptions, including significant changes in land productivity (36 CFR 219.12(k)(2)).

4. Determine planned cost versus actual costs associated with carrying out prescriptions (36 CFR 219.12(k)(3)).

5. Determine population trends of the management indicator species and relationship to habitat changes (36 CFR 219.19(a)(6)).

6. Evaluate effects of National Forest management on adjacent land, resources, and communities (36 CFR 219.7(f)).

7. Identify research needs to support or improve National Forest management 36 CFR 219.28).

8. Determine if lands are adequately restocked (36 CFR 219.12(k)(5)(i)).

9. Determine, at least every ten years, if lands identified as unsuitable for timber production have become suitable (36 CFR 219.12(k)(5)(ii).

10. Determine whether maximum size limits for harvest areas should be continued (36 CFR 219.12(k)(5)(iii)).

11. Ensure that destructive insects and disease organisms do not increase to potentially damaging levels following management activities (36 CFR 219.12(k)(5)(iv)).

6.3—EVALUATION OF MONITORING RESULTS. Monitoring and evaluation are separate, sequential tasks. Monitoring is designed to observe and record the results of both natural processes and actions permitted by forest land and resource management plans. Evaluation looks at those results, determines how well those results meet forest plan direction, and identifies measures to keep the plan viable.

6.31—Evaluation Techniques. Use a full spectrum of techniques and methods to evaluate the results obtained from monitoring. Evaluation techniques include but are not limited to:

1. Site-specific observations by on-site resource specialists.

2. Field assistance trips by other technical specialists.

3. General field observations by Forest Service officials.

4. On-going accomplishment reporting processes such as PAMARS.

5. Formal management reviews on a scheduled basis.

6. Discussions with other agencies and the public users.

7. Management team review of monitoring results.

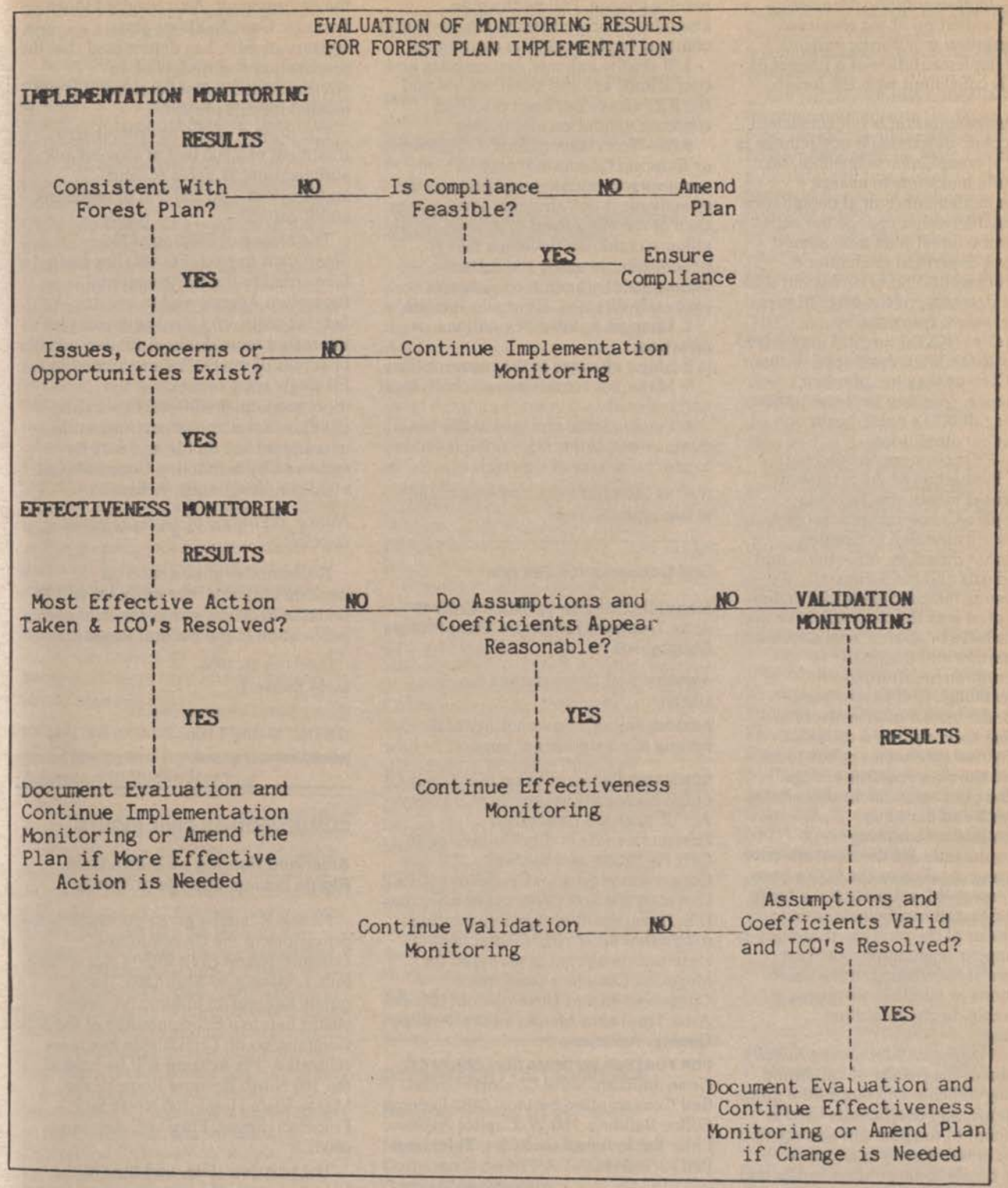
8. Interdisciplinary team reviews of monitoring results.

9. Involvement with existing research activities.

10. Review and analysis of records documenting monitoring results.

6.32—Evaluation in Relation to the Three Monitoring Levels. Exhibit 1 displays the process for evaluating monitoring results from each monitoring level. There is a direct, sequential relationship between the levels. This relationship is designed to focus initial attention at the implementation monitoring phase. The approved forest plan represents the most appropriate, current management direction; therefore, first ensure that it is implemented as designed. Needless expense and confusion may result by going directly to effectiveness or validation monitoring.

BILLING CODE 3410-11-M



BILLING CODE 3410-11-C

6.32a—Implementation Monitoring Results. Evaluation of the results of implementation monitoring indicate whether implementation of a project or activity is consistent with the forest plan.

1. If implementation is not consistent with the plan, determine if compliance is feasible. If compliance is feasible, take appropriate measures to ensure complete implementation. If compliance is not feasible, either change the activity or follow the forest plan amendment procedures described in chapter 5.

2. If implementation is consistent with the plan, determine if the original planning issues, concerns, or opportunities (ICO's) are still unresolved or if new ICO's have developed. If there are no ICO's or they are of minor consequence, continue implementation monitoring. If ICO's exist, begin effectiveness monitoring.

6.32b—Effectiveness Monitoring Results. Evaluation of the results of effectiveness monitoring indicate whether plans, prescriptions, projects, or activities are effective in meeting management direction, objectives, and the standards and guidelines.

1. If results indicate the initial action implemented was the most effective and the ICO's have been resolved; document the evaluation and continue implementation monitoring.

2. Even though ICO's have been resolved, the results of effectiveness monitoring may identify a different, more effective action that needs to be taken and the plan requires change. Follow the plan amendment procedures in chapter 5 and continue implementation monitoring.

3. If results indicate the most effective action was not taken or the ICO's have not been resolved, estimate if the basic assumptions and coefficients used in development of the plan are reasonable. If they appear reasonable, continue effectiveness monitoring. If the basic assumptions or coefficients appear questionable, begin validation monitoring.

6.32c—Validation Monitoring Results. Evaluation of the results of validation monitoring indicate whether initial data, assumptions, and coefficients used in development of the plan are correct, or if there is a better way to meet forest planning regulations, policies, goals, and objectives.

1. If results indicate initial assumptions and coefficients are valid, document the evaluation and continue effectiveness monitoring.

2. If ICO's have been resolved but the results of validation monitoring indicate a change in the basic assumptions or coefficients is needed, the plan may require change. Follow the plan amendment procedures in chapter 5 and continue implementation monitoring.

3. If results indicate assumptions and coefficients are still questionable and the ICO's have not been resolved, continue validation monitoring.

6.33—New Assumptions, Coefficients, or External Changes. It may be necessary to initiate monitoring at the effectiveness or validation level, rather than at the implementation level, when either a condition develops that is uncontrollable under the current management situation or a change is expressly directed. Examples include:

1. Changes in laws, regulations, or direction.

2. Major changes in the resource base.

3. Major economic changes, both local and regional.

4. Fundamental changes in the basic data, assumptions, and coefficients due to proven results of research.

[FR Doc. 88-15751 Filed 7-14-88; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Magnolia Cemetery; RC&D Critical Area Treatment Measure Plan; Phillips County, AR

AGENCY: Soil Conservation Service; USDA.

ACTION: Notice of availability of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines 40 CFR Part 1500; and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Magnolia Cemetery Resource Conservation and Development Critical Area Treatment Measure Plan, Phillips County, Arkansas.

FOR FURTHER INFORMATION CONTACT: Gene Sullivan, State Conservationist, Soil Conservation Service, 5404 Federal Office Building, 700 W. Capitol Avenue, Little Rock, Arkansas 72201, Telephone (501) 378-5445.

Magnolia Cemetery, Arkansas

Notice of Finding of No Significant Impact

Supplementary Information: The environmental assessment of this federally assisted project indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Gene Sullivan, state conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project concerns critical area treatment of 2,500 feet of streambank stabilization, 17 acres of land stabilization, and 200 feet of roadbank stabilization.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies plus interested individuals. A limited number of copies of the FONSI are available to fill single copy requests at the aforementioned address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Gene Sullivan, state conservationist, Arkansas.

Notice of Finding of No Significant Impact

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Date: July 12, 1988.

Leroy Brown, Jr.,

Acting State Conservationist.

[FR Doc. 88-16065 Filed 7-14-88; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Amended Hearing on Indian Civil Rights Issues; Change of Venue

Notice is hereby given pursuant to the provisions of the United States Commission on Civil Rights Act of 1983, Pub. L. 98-183, 97 Stat. 1304, that a public hearing on Indian civil rights issues before a Subcommittee of the U.S. Commission on Civil Rights has been relocated. The hearing will be held in the 100 North Banquet Room of the Monte Vista Hotel, 100 North San Francisco Street, Flagstaff, Arizona 86001.

The purpose, date, and time of the hearing remain the same as previously published in 53 FR 20881 (June 7, 1988) and 53 FR 25524 (July 7, 1988).

Dated at Washington, DC, July 12, 1988.

Murray Friedman,

Vice Chairman.

[FR Doc. 88-15932 Filed 7-14-88; 8:45 am]

BILLING CODE 6335-01-M

Colorado Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Colorado Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 4:30 p.m., on September 19, 1988, at the Executive Tower Inn, 1402 Curtis Street, Denver, Colorado 80202. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Maxine Kurtz or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 8, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–15934 Filed 7–14–88; 8:45 am]

BILLING CODE 6335–01–M

New Hampshire Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Hampshire Advisory Committee to the Commission will convene at 12:00 noon and adjourn at 3:00 p.m., on July 28, 1988, at the McLane, Graf, Raulerson & Middleton Bldg., Conference Room, 40 Stark St., Manchester, NH 03105. The purpose of the meeting is 1) to provide orientation for new members and receive an update on Commission and regional program activities, 2) plan future SAC activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Robert A. Wells 603/625–6464 or John I. Binkley, Director of the Eastern Regional Division of the Commission at 202/523–5264 or TDD 202/376–8117. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 6, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–15933 Filed 7–14–88; 8:45 am]

BILLING CODE 6335–01–M

West Virginia Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the West Virginia Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 12:00 noon on August 3, 1988, at the West Virginia Human Rights Commission, Room 215, 1036 Quarrier St., Charleston, WV 25301. The purpose of the meeting is 1) discuss the proceedings of the 12/10/87 forum on "Under-representation of Minorities and Women in Institutions of Higher Education in West Virginia," and 2) plan future SAC activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Adam R. Kelly 304/652–4141 or John I. Binkley, Director of the Eastern Regional Division of the Commission at 202/523–5264 or TDD 202/376–8117. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 6, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–15935 Filed 7–14–88; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

National Bureau of Standards

National Fire Codes: Request for Comments on NFPA Technical Committee Reports

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At its Fall Meeting in November or its Annual Meeting in May, the NFPA acts on recommendations made by its technical committees.

The purpose of this notice is to request comments on the technical reports which will be presented at NFPA's 1989 Annual Meeting. The publication of this notice by the National Bureau of Standards (NBS) on behalf of NFPA is being undertaken as a public service; NBS does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: The National Electrical Code (NEC) is published in a separate Technical Committee Report and is available for distribution on June 17, 1988. Comments received on or before October 21, 1988 will be considered by the NEC Committee of NFPA before final action is taken on the proposals.

Thirty-six other Reports are published in the 1989 Annual Meeting Technical Committee Reports and are available for distribution on July 29, 1988. Comments received on or before October 7, 1988 will be considered by the respective NFPA Committees before final action is taken on the proposals.

ADDRESS: The National Electrical Code Technical Committee Report and the 1989 Annual Technical Committee Reports are available from NFPA, Publications Department, Batterymarch Park, Quincy, Massachusetts 02269. (The single copy price is $5.00 to cover postage and handling.) Comments on the reports should be submitted to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

Standards developed by the technical committees of the National Fire Protection Association (NFPA) have been used by various Federal Agencies as the basis for Federal regulations concerning fire safety. The NFPA standards are known collectively as the National Fire Codes. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Revisions of existing standards and adoption of new standards are reported by the technical committees at the NFPA's Fall Meeting in November or at the Annual Meeting in May of each

year. The NFPA invites public comment on its Technical Committee Reports.

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269. Commentors may use the forms provided for comments in the Technical Committee Reports. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before October 21, 1988 for the NEC or October 8, 1988 for the others, will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the Technical Committee Documentation by April 7, 1989 for the NEC and March 24, 1989 for the others, prior to the Annual Meeting.

A copy of the Technical Committee Documentation will be sent automatically to each commentor. Action on the Technical Committee Reports (adoption or rejection) will be taken at the Annual Meeting, may 15–18, 1989, in Washington, DC, by NFPA members.

Dated: July 11, 1988.

Ernest Ambler,

Director.

1989 Fall Meeting Technical Committee Reports

[P-Partial revision; W-Withdrawal; R-Reconfirmation; N-New; C-Complete Revision]

NFPA No.	Title	Action
12A	Halon 1301 Fire Extinguishing Systems.	P
13E	Fire Department Operations in Properties Protected by Sprinkler and Standpipe Systems.	P
20	Centrifugal Fire Pumps	P
33	Spray Application Using Flammable and Combustible Materials.	P
34	Dipping and Coating Process Using Falmmable & Combustible Liquids.	P
51B	Cutting and Welding Process	P
70[1]	National Electrical Code	P
71	Central Station Service Signaling Systems.	P
75	Electronic Computer/Data Processing Equipment.	P
78	Lightning Protection Code	P
85B	Natural Gas-Fired Multiple Burner Boiler-Furnaces.	R
85D	Fuel-Oil Fired Multiple Burner Boiler-Furnaces.	P
90A	Air Conditioning and Ventilating Systems.	C
90B	Warm Air Heating and Air Conditioning Systems.	P
110A	Stored Energy Systems	N
231D	Storage of Rubber Tires	P
241	Building Construction & Demolition Operations.	P
258	Test Method for Determining Smoke Generation of Solid Materials.	P
260	(Existing Cigarette Ignition Resistance of Upholstered 260A) Furniture Components.	C
298	Chemicals and Wildland Fire Control.	N
402M	Aircraft Rescue & Fire Fighting Operational Procedures.	P
408	Aircraft Hand Fire Extinguishers.	R
422M	Aircraft Fire and Explosion Investigators.	R
423	Aircraft Engine Test Facilities	C
497B	(Classified) Locations for Electrical Installations in Chemical Processing Plants.	N
497M	Classification of Gases, Vapors and Dusts for Electrical Equipment in Hazardous Locations.	P
701	Flame Resistant Textiles and Films.	C
914	Fire Protection Practices for Rehabilitation of Historic Buildings.	N
1123	Public Display of Fireworks	C
1201	Organization for Fire Services	C
1202	Organization of a Fire Department.	W
1231	Water Supplies for Suburban & Rural Fire Fighting.	C
1301	Public Fire Prevention Criteria	W
1401	Training Reports & Reords	C
1404	Use of Self/Contained Breathing Apparatus in Training Exercises.	N
1931	Fire Department Ground Ladders.	P
1932	Fire Department Ground Ladders, Use, Maintenance & Sevice Testing.	P

[1] Published in a separate Technical Committee Report.

[FR Doc. 88–15954 Filed 7–14–88; 8:45am]

BILLING CODE 3510–13–M

National Fire Codes; Request for Proposals for Revision of Standards

AGENCY: National Bureau of Standards, Commerce Department.

ACTION: Notice of request for proposals.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its fire safety standards and requests proposals from the public to amend existing NFPA fire safety standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its standards. The publication of this notice of request for proposals by the National Bureau of Standards (NBS) on behalf of NFPA is being undertaken as a public service; NBS does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESS: Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops fire safety standards which are known collectively as the National Fire Codes. Federal agencies frequently use these standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Request for Proposals

Interested persons may submit amendments, supported by written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269. Proposals should be submitted on forms available from the NFPA Standards Administration Office. Each person must include his or her name and address, identify the document and give reasons for the proposal. Proposals received before or by 5:00 P.M. E.D.S.T. on the closing date indicated will be acted on by the Committee. The NFPA will consider any proposal that it receives on or before the date listed with the standard.

At a later date, each NFPA Tecnnical Committee will issue a report which will include a copy of written proposals that have been received and an account of their disposition. Each person who has submitted a written proposal will receive a copy of the report.

Dated: July 11, 1988.

Ernest Ambler,

Director.

NFPA No. and Title	Prop. closing date
NFPA10-1988, Portable Fire Extinguishers.	July 15, 1988.
NFPA10L-1988, Model Enabling Act for the Sale or Leasing and Servicing of Portable Fire Extinguishers.	Do.
NFPA12B-1985, Halon 1211 Fire Extinguishing Systems.	Dec. 2, 1988.
NFPA12D—Proposed, Halogenated Agent Use & Release Reporting Method.	Do.
NFPA14-1986, Installation of Standpipe & Hose System.	July 15, 1988.
NFPA30-1987, Flammable and Combustible Liquids Code.	Jan. 13, 1989.
NFPA30A-1987, Service Stations.	Do.
NFPA30B—Proposed, Aerosol Products.	Do.
NFPA31-1987, Oil Burning Equipment.	July 14, 1989.
NFPA32-1985, Drycleaning Plants.	July 15, 1988.
NFPA35-1987, Manufacture of Organic Coatings.	July 15, 1990.
NFPA37-1984, Stationary Combustion Engines and Gas Turbines.	July 15, 1988.
NFPA45-1986, Fire Protection for Laboratories Using Chemicals.	Open.
NFPA46-1985, Storage of Forest Products.	July 15, 1988.
NFPA53M-1985, Fire Hazards in Oxygen Enriched Atmospheres.	Do.
NFPA70B-1987, Electrical Equipment Maintenance.	Jan. 13, 1989.
NFPA72A-1987, Local Protective Signaling Systems.	July 15, 1988.
NFPA72B-1986, Auxiliary Protective Signaling Systems.	Do.
NFPA72C-1986, Remote Station Protective Signaling Systems.	Do.
NFPA72D-1986, Proprietary Protective Signaling Systems.	Do.
NFPA72E-1987, Automatic Fire Detectors.	Jan. 13, 1989.
NFPA72F-1984, Emergency Voice/Alarm Communication Systems.	July 15, 1988.
NFPA79-1987, Industrial Machines.	Jan. 13, 1989.
NFPA86-1985, Ovens and Furances.	July 15, 1988.
NFPA86D-1986, Ovens Using Vacuum Atmosphere.	Do.
NFPA88A-1985, Parking Structures.	Jan. 13, 1989.
NFPA88B-1985, Repair Garages.	Do.
NFPA92B—Proposed, Recommended Practice for Smoke Control Systems in Atria, Covered Malls and large Areas.	July 15, 1988.
NFPA96-1984, Removal of Smoke & Grease-Laden Vapors from Commercial Cooking Equipment.	Jan. 13, 1989.
NFPA101-1988, *Life Safety Code.*	Jan. 6, 1989.
NFPA123-1987, Underground Coal Mines.	Jan. 13, 1989.
NFPA150-1985, Firesafety in Racetrack Stables.	Do.
NFPA251-1985, Fire Tests of Building Construction Materials.	July 15, 1988.
NFPA252-1984, Fire Tests of Door Assemblies.	Do.
NFPA253-1984, Critial Radiant Flux Test for Floor Covering Systems.	Do.
NFPA255-1984, Test of Surface Burning Characteristics of Building Materials.	Do.
NFPA257-1985, Fire Tests of Window Assemblies.	Do.
NFPA262-1985, Test for Fire and Smoke Characteristics Wires and Cables.	Do.
NFPA264—Proposed, Test Methods for Heat Release Rates Using Oxygen Consumption/Calorimeter.	July 17, 1988.
NFPA264A—Proposed, Test Methods for Heat Release Rates For Upholstered Furniture Components or Composites Using Oxygen Consumption Calorimeter.	Jan. 13, 1989.
NFPA265—Proposed, Method of Test for Evaluating Room Fire Growth Potential of Texile Wall Coverings.	July 15, 1988.
NFPA312-1984, Fire Protection of Vessels During Construction Repair and Lay-Up.	Do.
NFPA318—Proposed, Protection of Clean Rooms.	Dec. 2, 1988.
NFPA321-1987, Classification of Flammable & Combustible Liquids.	July 14, 1989.
NFPA325M-1984, Fire-Hazard Properties of Flammable Liquids, Gases and Volatile Solids.	July 14, 1988.
NFPA327-1987, Cleaning or Safeguarding Small Tanks and Containers.	July 15, 1990.
NFPA328-1987, Control of Flammable & Combustible Liquids and Gases in Manholes & Sewers.	Do.
NFPA329-1987, Underground Leakage of Flammable & Combustible Liquids.	Do.
NFPA385-1985, Tank Vehicles for Flammable and Combustable Liquids.	July 15, 1988.
NFPA386-1985, Portable Shipping Tanks.	Do.
NFPA418-1979, Roof-Top Heliport Construction & Protection.	Oct. 1, 1988.
NFPA491M-1986, Hazardous Chemical Reactions.	July 14, 1989.
NFPA501C-1986, Recreational Vehicles.	July 15, 1988.
NFPA501D-1986, Recreational Vehicle Parks.	Do.
NFPA704-1985, Identification of Fire Hazards of Materials.	Do.
NFPA850-1986, Fossil Fueled Steam Electric Generating Plants.	Do.
NFPA901-1986, Uniform Coding for Fire Protection.	Do.
NFPA902M-1986, Fire Reporting Field Incident Manual.	Do.
NFPA903M-1986, Property Survey Manual.	Do.
NFPA904M-1986, Incident Follow-up Report Manual.	Do.
NFPA910-1985, Protection of Library Collections from Fire.	Jan. 1, 1989.
NFPA911-1985, Protection of Museum Collections from Fire.	Do.
Proposed 921M, Manual on Investigation of Fires.	July 15, 1988.
NFPA1901-1985, Pumper Fire Apparatus.	Nov. 1, 1988.
NFPA1902—Proposed, Initial Attack Fire Appartus.	Do.
NFPA1903—Proposed, Mobile Water Supply Fire Apparatus.	Do.
NFPA1904—Proposed, Aerial Ladder Fire Apparatus.	Do.
NFPA1905—Proposed, Elevating Platform Fire Apparatus.	Do.
NFPA1906—Proposed, Water Tower Fire Apparatus.	Do.
NFPA1911-1987, Testing Fire Department Pumpers.	Do.
NFPA1965—Proposed, Fire Hose Couplings.	Jan. 13, 1989.
NFPA1966—Proposed, Threadless Couplings.	Do.
NFPA1975-1985, Station Uniforms.	Oct. 1, 1988.
NFPA1981-1987, Open Circuit Self-Contained Breathing Apparatus.	Oct. 15, 1988.
NFPA1983-1985, Personnel Ropes.	Oct. 1, 1988.
NFPA1991—Proposed, Vapor-Protective Suits for Hazardous Chemical Emergencies.	July 15, 1988.
NFPA1992—Proposed, Liquid Splash-Protective Suits for Hazardous Chemical Emergenices.	Do.
NFPA1993—Proposed, Liquid Splash-Protective Suits for Non-Emergency Non-Flammable Hazardous Chemical Situations.	Do.

[FR Doc. 88-15955 Filed 7-14-88; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; North Gulf Oceanic Society (P351C)

On March 29, 1988, notice was published in the **Federal Register** (53 FR 10139) that an application had been filed by North Gulf Oceanic Society, P.O. Box 15244, Homer, Alaska 99603, to inadvertently harass up to 350 killer whales (*Orcinus orca*) during photo-identification studies for the purpose of scientific research.

Notice is hereby given that on July 11, 1988, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), National Marine Fisheries Service issued a Scientific Research Permit for the above taking to North Gulf Oceanic Society subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC;

and Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

Date: July 11, 1988.

[FR Doc. 88-15945 Filed 7-14-88; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Liposome Co. Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to The Liposome Company Inc., having a place of business at Princeton, NJ, an exclusive right in the United States and certain foreign countries to practice the intention embodied in U.S. Patent Application Serial Number 7-148,692, "A Synthetic Antigen Evoking Anti-HIV Response." The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royality-bearing and will comply with the terms of conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88-15991 Filed 7-14-88; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Pakistan

July 12, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: July 19, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posed on the bulletin boards of each Customs port or call (202) 343-6498. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limits for Categories 339, 341, 347/348 and 352 are being reduced for carryfoward used during the previous agreement year.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 51 published in the **Federal Register** on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 12, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on July 19, 1988, the directive of December 30, 1987 is hereby amended to reduce the current limits for cotton textile products in the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and Pakistan:

Category	Adjusted 12-mo limit (dozen) [1]
339	606,422
341	244,938
347/348	318,710
352	202,000

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-15962 Filed 7-14-88; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1988 a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: August 15, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr., (703) 557-1145.

SUPPLEMENTARY INFORMATION: On May 20, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (53 FR 18117) of proposed addition to Procurement List 1988, December 10, 1987 (52 FR 46926).

After consideration of the relevant matter presented, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1988: Commissary Shelf Stocking, Custodial and Warehouse Service, McClellan Air Force Base, California.

H.G. Fischer,

Acting Executive Director.

[FR Doc. 88-15958 Filed 7-14-88; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1988 Proposed Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to and Deletion from Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1988 a commodity to be produced and services to be provided by workshops for the blind and other severely handicapped.

Comments Must Be Received on or Before: August 15, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr., (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and service to Procurement List 1988, December 10, 1987 (52 FR 46926).

Commodity

Lanyard, Camouflage
1080-00-571-5015

Service

Grounds Maintenance and Sprinkler System Maintenance
Buildings 1250, 1260, 1633, 2410, 2419, 2453, 2600, 2850, 3535, Offsite, 3950, 5601, 6441, 6443, 8251, 8252, 8255, T-38, and 1200 Parking Islands
Edwards Air Force Base, California

Deletion

It is proposed to delete the following service from Procurement List 1988, December 10, 1987 (52 FR 46926): Commissary Shelf Stocking and Custodial Service, Columbus Air Force Base, Mississippi.

H.G. Fischer,

Acting Executive Director.

[FR Doc. 88-15959 Filed 7-14-88; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an information collection requirement concerning Preaward Survey Forms.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Owen Greene, Defense Acquisition Regulatory Council Staff, (202) 697-7266.

SUPPLEMENTARY INFORMATION:

a. Purpose

To protect the government's interest and to ensure timely delivery of items of the items of the requisite quality, contracting officers, prior to award, must make and affirmative determination that the prospective contractor is responsible, i.e., capable of performing the contract. Before making such determination, the contracting officer must have in his possession or must obtain information sufficient to satisfy himself that the prospective contractor (i) has adequate financial resources, or the ability to obtain such resources, (ii) is able to comply with required delivery schedule, (iii) has a satisfactory record of performance, (iv) has a satisfactory record of integrity, and (v) is otherwise qualified and eligible to receive an award under appropriate laws and regulations. If such information is not in the contacting officer's possession, it is obtained through a preaward survey conducted by the contract administration office responsible for the plant and/or the geographic area in which the plant is located. The necessary data is collected by contract administration personnel from available data or through plant visits, phone calls, and correspondence and entered on Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408 in detail commensurate with the dollar value and complexity of the procurement. The information is used by Federal contracting officers to determine whether a prospective contractor is responsible.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 12,000; responses per respondent, .5; total annual responses, 6,000; preparation hours per response, 24; and total response burden hours, 144,000.

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0011, Preaward Survey Forms.

Dated: July 8, 1988.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 88-15952 Filed 7-14-88; 8:45 am]

BILLING CODE 6820-61-M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an information collection requirement concerning Solicitation Mailing List Application.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FUTHER INFORMATION CONTACT: Ms. Victoria Moss, Office of Federal Acquisition and Regulatory Policy, (202) 523–5168.

SUPPLEMENTARY INFORMATION:

a. Purpose

Government Procurement Solicitation Mailing List Application, is used by all Federal Agencies as an application form for prospective contractors in connection with the establishment and maintenance of lists of firms interested in selling to the Government. The information is used to establish files of firms to be solicited when the products or services they provide are needed by the government.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 243,000; responses per respondent, 4; total annual responses, 972,000; preparation hours per response, .58; and total response burden hours, 563,760.

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0002, Solicitation Mailing List Application.

Dated: July 18, 1988.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 88–15951 Filed 7–14–88; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF ENERGY

Economic Regulatory Admininstation

[ERA Docket No. 88–34–NG]

Encor Energy (America) Inc.; Application to Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of application for blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on June 2, 1988, of an application filed by Encor Energy (America) Inc. (Encor) for blanket authorization to import up to a maximum of 29.2 Bcf of Canadian natural gas for sale in the domestic spot market over a two-year term beginning on the date of the first delivery.

The application is filled with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than August 15, 1988.

FOR FURTHER INFORMATION:

P.J. Fleming, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW Washington, DC 20585, (202) 586–4819

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Encor, a Delaware corporation with its prinicipal office in Calgary, Alberta, Canada, is an indirect subsidiary of Encor Energy Corporation Inc., one of Canada's largest natural gas producers, which, in turn, is a subsidiary of TransCanada PipeLines Limited. The imported gas would be supplied from both affiliated and non-affiliated sources and sold at competitive market prices to a wide range of U.S. consumers on a short-term and spot basis. The specific terms of each import and sale would be individually negotiated. Encor intends to use existing facilities of U.S. pipelines to transport the gas. The delivery points where the gas would enter the U.S. would be established during sales contract negotiations and may vary for different transactions.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in deteminating whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if the ERA approves this requested blanket import, it may permit the import of the gas at any existing point of entry and through any existing transmission system. The ERA will also condition the authorization on the filing of quarterly reports to facilitate ERA monitoring of the operation and effectiveness of the blanket program.

Public Committee Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application, must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to interven, notices of intervention, requests for additional procedures, and written comments should be filed with the National Gas Division, Office of Fuels Programs, Economic Regulatory Admininstration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. There must be filed no later than 4:30 p.m. e.d.t., August 15, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures by provided, such as additional written comments, as oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties purusuant to this notice in accordance with 10 CFR 590.316.

A copy of Encor's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 7, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–15994 Filed 7–14–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER88–506–000, et al.]

Portland General Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

July 11 1988.

Take notice that the following filings have been made with the Commission:

1. Portland General Electric Company

[Docket No. ER88–506–000]

Take notice that on July 5, 1988, Portland General Electric Company (PGE) tendered for filing an amendment to its November 24, 1987 filing, Rate Schedule FERC No. 60, which is a sales agreement with the City of Santa Clara for the sale during a 19-month period beginning October 1, 1987 of up to 379,920 MWh of firm energy surplus deliverable at rates not in excess of 40 MW per hour. A portion of Santa Clara's energy delivery is assignable to Sacramento Municipal Utility District (SMUD).

PGE states the reason for the amendment is to file a letter agreement between PGE and SMUD, required by the Agreement, pertaining to assignment terms and conditions of the contract.

PGE requests a continuation of the October 1, 1987 effective date and therefore requests a waiver of the Commission's notice requirements.

Copies of the filing have been served upon the City of Santa Clara, the Sacramento Municipal Utility District, and the Oregon Public Utility Commission.

COMMENT DATE: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Kentucky Utilities Company and Old Dominion Power Company

[Docket No. EC88–24–000]

Take notice that on July 5, 1988, Kentucky Utilities Company (KU) and Old Dominion Power Company (ODP) tendered for filing an application for an Order authorizing a planned corporate reorganization.

KU is a corporation organized and existing under the laws of the Commonwealth of Kentucky, and is engaged in producing and selling electric energy. KU owns 100% of the capital stock of Old Dominion Power Company. ODP is a public utility which furnishes electric energy in five counties in southwestern Virginia. KU also owns 20% of the common stock of Electric Energy, Inc. (EEI), which owns a generating station at Joppa Illinois. The remaining ownership of EEI is as follows: Union Electric Company, 40%; Illinois Power Company, 20%; and Central Illinois Public Service Company, 20% (together with KU, the "Sponsoring Companies"). EEI supplies electrical energy requirements to an installation of the Department of Energy (DOE) at Paducah, Kentucky. All of the electricity sold by EEI is sold either to the DOE or the Sponsoring Companies. KU and ODP propose to reorganize by causing the creation of a holding company (Company) which will become the owner of all the common stock of KU. Under the reorganization plan, KU will retain the whole of its facilities, as well as its ownership interest in ODP and EEI. OPD seeks (1) a declaratory order disclaiming jurisdiction by the Commission over the reorganization insofar as it involves ODP or (2) if such declaratory order is not issued, an order granting any authorization required insofar as the reorganization involves ODP.

KU and ODP states that the proposed corporate reorganization is consistent with the public interest.

COMMENT DATE: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Niagara Mohawk Power Corporation

[Docket No. ER87–418–003]

Take notice that on July 1, 1988, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing its compliance refund report pursuant to the Commission's letter order issued April 18, 1988.

Niagara Mohawk states that it submitted this report for the refund and interest on the rates charged the New York Power Authority under Rate Schedule No. 138 in accordance with the Settlement Agreement approved by the Commission on April 18, 1988.

Niagara Mohawk further states that the refund (principal and interest) of $43,888.94 was tendered to the Power Authority on June 2, 1988. This Report shows monthly billing determinants; revenue receipt dates, revenues under the prior, present, and settlement rates; the monthly revenue refund; monthly interest computed; and a summary of such information for the total refund period.

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. American Electric Power Service Corp.

[Docket No. ER88–504–000]

Take notice that on July 1, 1988, American Electric Power Service Corp. (AEP) tendered for filing on behalf of its affiliates, Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, and Ohio Power Company, which are all AEP affiliated operating subsidiaries (and are sometimes collectively referred to as the AEP Parties), revisions to the AEP Parties' Emergency Energy and Short Term Power rates. The AEP Parties have revised their rate in their Emergency Energy and Short Term Power Service Schedules to insure uniform rates by the AEP System companies for the same service to unaffiliated AEP System companies. These rates previously have been accepted for filing by the Commission in Docket No. ER88–358–000. AEP has requested an effective date of July 1, 1988.

Copies of the filing were served upon Kentucky Public Service Commission, Public Service Commission of Indiana, Michigan Public Service Commission, Public Utilities Commission of Ohio, State Corporate Commission of Virginia, Public Service Commission of West Virginia, and the appropriate utilities interconnected with the AEP Parties.

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Eben W. Pyne

[Docket No. ID–2363–000]

Take notice that on July 6, 1988, Eben W. Pyne tendered for filing an application for authorization under Section 305(b) of the Federal Power Act and Part 45 of the Regulations of the Federal Energy Regulatory Commission to hold the following interlocking positions:

Position	Corporation	Classification
Director	Long Island Lighting Company.	Public Utility.
Director	The Home Group, Inc.	owns through a subsidiary of a subsidiary all of the stock of two corporations authorized to underwrite or participate in the marketing of securities of a public utility (other than LILCO).
Director	The Home Insurance Company.	owns through a subsidiary of a subsidiary all of the stock of two corporations authorized to underwrite or participate in the marketing of a public utility (other than LILCO).

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-75995 Filed 7-14-88; 8:45 am]

BILLING CODE 6717-01-M

Experiments Colloquium; Natural Gas Transportation Network, Auction; Laboratory

Issued July 11, 1988

On July 18, 1988, Professor Charles Plott (California Institute of Technology) and Professor Vernon L. Smith (University of Arizona) will discuss their laboratory experiements, sponsored by the Federal Energy Regulatory Commission (FERC), concerning the use of auctions for a natural gas transportation network. The colloquium will start at 10:00 a.m. in Hearing Room A, 825 North Capitol Street, NE., Washington, DC.

The professors' research is described in their FERC Office of Economic Policy Technical Reports, *Research on Pricing in a Gas Transportation Network* (no. 88-2) by Professor Plott and *An Experimental Examination of Competition and "Smart" Markets on Natural Gas Pipeline Networks* (no. 88-2) by Professor Smith and his colleagues. A policy context and a summary of this research is provided by a companion Technical Report by Dan Alger (a member of the FERC staff), entitled *A Policy Context for FERC-sponsored Laboratory Experiments concerning Market-based Regulation of Natural Gas Transportation* (no. 88-1). These Technical Reports will be available on July 13 from the Division of Public Inquiries, Room 2214, 825 North Capitol Street, NE., Washington, DC 20426 (202-357-8055) during regular business hours.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15937 Filed 7-14-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER88-502-000, et al.]

Toledo Edison Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate filings

Take notice that the following filings have been made with the Commission:

1. Toledo Edison Company

[Docket No. ER88-502-000]

July 8, 1988.

Take notice that on June 30, 1988, Toledo Edison Company (Toledo Edison) tendered for filing the Fourth Addendum to the Municipal Resale Service Rate Agreement between Toledo Edison and American Municipal Power-Ohio, Inc. (AMP-Ohio) dated June 8, 1988.

Toledo Edison states that the Fourth Addendum permits AMP-Ohio to request that demand charges for production transmission and distribution capacity be assessed on the basis of the Monthly Maximum Coincident Peak Demand, as defined in the Fourth Addendum, at all Customer Delivery Points in lieu of the monthly maximum noncoincident peak demand at each Customer Delivery Point. Toledo Edison further states that the Fourth Addendum to the Municipal Resale Service Rate Agreement contains certain modifications which have been found to be necessary or desirable as a result of the experience of the parties. Toledo Edison states that the Fourth addendum will not have any impact on rates or sales under the Municipal Resale Service Rate Agreement, and has requested waiver of the Commission's regulations to the extent necessary to permit the Fourth Addendum to become effective on June 9, 1988.

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this document.

Tucson Electric Power Company, San Diego Gas & Electric Company, SD Acquisition Corp. (California), and San Diego Acquisition Corp. (Arizona)

[Docket No. EC88-23-000]

July 7, 1988.

Take notice that on July 1, 1988, Tucson Electric Power Company (Tucson), San Diego Gas & Electric Company (SDG&E) SD Acquisition Corp. (California Acquisition), and San Diego Acquisition Corp. (Arizona Acquisition) tendered for filing a Joint Appllication seeking approval of a proposed merger.

Under the merger proposal, Tucson and SDG&E will merge into and within California Acquisition, which will be renamed upon completion of the merger. If the parties so elect, Arizona Acquisition, a wholly-owned subsidiary of SDG&E, would be merged into Tucson and Tucson would become a wholly-owned subsidiary of SDG&E. The parties to the merger anticipate substantial efficiencies issuing from integration of applicants' now-separate electric businesses, and expect no adverse impact on any of their resale or transmission service customers.

Copies of this filing have been served upon the Arizona Corporation Commission and the California Public Utilities Commission.

Comment date: August 5, 1988, in accordance with Standard Paragraph E at the end of this notice.

Watsonville Cogen Corp.

[Docket No. QF88-440-000]

July 8, 1988.

On June 20, 1988, Watsonville Cogen Corp. (Applicant), of P.O. Box 25042, San Mateo, California, 94402 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No

determination has been made that the submittal constitutes a complete filing.

The topping cycle cogeneration facility will be located at Watsonville, Santa Cruz County, California. The major equipment will include a combustion turbine-generator, a waste heat recovery boiler, and an extraction steam turbine-generator. The facility will provide useful thermal energy to an industrial process. The net electric power production capacity will be approximatley 28.7 megawatts. The primary energy source will be natural gas.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

4. Kamine South Glens Falls Cogen Co., Inc.

[Docket No. QF88-437-000]

July 8, 1988.

On June 14, 1988, Kamine South Glens Falls Cogen Co., Inc. (Applicant), of 1620 Route 22 East, Union, New Jersey 07083, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the James River Corporation in South Glens Falls, New York. The facility will consist of a gas turbine generator, a waste heat recovery steam generator equipped with supplementary firing and an extraction/condensing turbine generator. Thermal energy recovered from the facility will be used in a papermaking process. The net electric power production capacity of the facility will be 50 MW. The primary source of energy will be natural gas. Construction of the facility will begin September 1988.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

5. Colstrip Energy Limited Partnership

[Docket No. ER88-500-000]

July 8, 1988.

Take notice that on June 30, 1988, Colstrip Energy Limited Partnership (Colstrip), a limited partnership consisting of Rosebud Energy Corp., Spruce Limited Partnership and Harrier Power Corporation, tendered for filing pursuant to 18 CFR 35.1 and 35.12, proposed FERC Rate Schedule No. 1, applicable to sales of energy by Colstrip to the Montana Power Company (MPC) from a waste coal electric generating facility to be located in Rosebud County, Montana (Facility). The Facility is certified as a qualifying cogeneration facility and as a qualifying small power production facility within the meaning of section 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) and the regulations promulgated thereunder.

The proposed initial rate is set forth in the Power Purchase Agreement, as amended, dated October 15, 1984, between Colstrip and MPC. Pursuant to Order Nos. 5017 and 5017a of the Public Service Commission of the State of Montana (Montana Commission), the Power Purchase Agreement establishes a purchase price, based on MPC's avoided cost, for all electricity delivered by Colstrip to MPC which includes both an energy charge and a capacity charge.

The energy and capacity rates are comprised of a scheduled component and an escalating component. The scheduled component is based on a schedule prescribed by the Power Purchase Agreement for each year thereafter for the first 15 years of project operation. Starting in year 16, the scheduled component will be established based on order of the Montana Commission. The escalating component is calculated based on rates established by the Montana Commission pursuant to tariffs filed by MPC.

Colstrip requests waiver of the Federal Energy Regulatory Commission's (Commission) notice requirements so that the rate schedule may take effect as of the date of Colstrip's initial delivery to MPC.

Additionally, Colstrip seeks waiver of the Commission's regulations regarding cost of service documentation, accounting practices, reporting requirements, filing charges and annual charges as well as waiver as to property dispositions and consolidations, securities issuances or assumptions of liability, the holding of interlocking positions and such other matters as the Commission deems appropriate.

Copies of the instant filing have been served upon MPC and the Montana Commission.

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Kanawha Valley Power Company

[Docket No. ER88-499-000]

July 8, 1988.

Take notice that on June 30, 1988, Kanawha Valley Power Company (Kanawha) tendered for filing modifications to its 1935 and 1937 Agreements (Schedule FPC Nos. 1 and 2, respectively) with Appalachian Power Company (Appalachian) providing for the supply of power and energy from Kanawha's Marmet and London (Project No. 1175) and Winfield (Project No. 1290) hydro-electric plants, respectively, to be effective September 1, 1988.

The modifications would increase annual revenues to Kanawha for sales to Appalachian by $753,579 based on the twelve month period ended April 30, 1988.

The proposed changes are required due to increases in the cost of providing service under the 1935 and 1937 Agreements since the 1st rate modification in April 1988. The rates under the proposed modification are designed to provide Kanawha with the opportunity to earn a 10.42% overall return. Both Kanawha and Appalachian are affiliates of the American Electric Power System.

Kanawha states that a copy of the filing has been provided to the Public Service Commission of West Virginia, the Virginia State Corporation Commission and Appalachian Power Company.

7. Detroit Edison Company

[Docket No. ER88-493-000]

July 8, 1988.

Take notice that on June 29, 1988, Detroit Edison Company (Detroit Edison) tendered for filing Supplement No. 3 and Supplement No. 4 to Detroit Edison's Rate Schedule No. 23.

Detroit Edison states that it had constructed an additional connection and delivery point between its system and the system of the City of Wyandotte, Michigan, as requested by the City. Detroit Edison states that the connection is scheduled to be completed and ready to be energized on June 30, 1988. Detroit Edison further states that Supplement No. 3 is a Special Facilities Contract between Detroit Edison and the City which establishes that Wyandotte will pay upon the initiation of service a monthly charge of one-half of one percent of the costs of constructing the facilities to connect the two systems to cover property taxes, insurance, and maintenance and a monthly charge to reserve 25 MW of Detroit Edison's River Rouge-Riverview 120 kV line.

Detroit Edison states that Supplement No. 4 establishes the rates for service at the additional delivery point. The rates provide for a monthly service charge, a demand charge for monthly billing demand, an additional demand charge for maximum demand less a substation credit, energy charges, miscellaneous surcharges and credits all as more fully set forth in the filing. Detroit Edison also

states that under Supplement No. 4 the City may obtain standby service.

Detroit Edison requests an effective date of June 30, 1988 for both Supplement No. 3 and Supplement No. 4.

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.

[Docket No. ER88-501-000]

July 8, 1988.

Take notice that on June 30, 1988, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., tendered for filing a Notice of Cancellation of its Rate Schedule F.P.C. No. 9. This terminates its Systems Interconnection Agreement between Montana-Dakota, Otter Tail Power Company (Otter Tail) and Northwestern Public Service Company (NWPS) which was originally dated April 5, 1965.

Notice of proposed cancellation has been served upon Otter Tail and NWPS.

The agreement contains numerous obsolete provisions such as Article II of the agreement relating to the Upper Mississippi Valley Power Pool which no longer exists, having been superseded by the Midwest Area Power Pool. The agreement also has fulfilled its purpose and is no longer necessary.

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Niagara Mohawk Power Corporation

[Docket No. ER88-494-000]

July 8, 1988.

Take notice that on June 30, 1988, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an agreement between Niagara Mohawk and Newport Electric Corporation dated April 22, 1988.

The April 22, 1988 agreement is to provide for the sale by Niagara Mohawk Power Corporation of peaking capacity and related energy to Newport Electric Corporation. The terms of this agreement and the period during the purchase of Peaking Capacity can occur shall commence on May 1, 1988 and shall continue until October 31, 1988.

Copies of this filing were served upon Newport Electric Corporation and the New York State Public Service Commission.

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. Niagara Mohawk Power Corporation

[Docket No. ER88-495-000]

July 8, 1988.

Take notice that on June 30, 1988, Niagara Mohawk Power Corporation tendered for filing an agreement between Niagara Mohawk Power Corporation and Central Vermont Public Service Corporation dated May 1, 1988.

The May 1, 1988 agreement is to provide for the sale by Niagara Mohawk Power Corporation of firm capacity and related energy to Central Vermont Public Service Corporation. The terms of this agreement and the period during which the purchase of Capacity and Energy can occur shall commence on May 1, 1988 and shall continue until October 31, 1988.

Copies of this filing were served upon Central Vermont Public Service Corporation and the New York State Public Service Commission.

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

11. Niagara Mohawk Power Corporation

[Docket No. ER88-496-000]

July 8, 1988.

Take notice that on June 30, 1988, Niagara Mohawk Power Corporation tendered for filing an agreement between Niagara Mohawk Power Corporation and New England Power Company dated May 1, 1988.

The May 1, 1988 agreement is to provide for the sale by Niagara Mohawk Power Corporation of firm capacity and related energy to New England Power Company. The terms of this agreement and the period during which the purchase of Capacity and Energy can occur shall commence on May 1, 1988 and shall continue until October 31, 1988.

Copies of this filing were served upon New England Power Company and the New York State Public Service Commission.

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

12. Arizona Public Service Company

[Docket No. ER88-503-000]

July 8, 1988.

Take notice that on July 1, 1988, Arizona Public Service Company (APS) tendered for filing a Letter Agreement between APS and Maricopa County Municipal Water Conservation and Drainage District Number One (MCM) executed June 24, 1988. This Agreement provides for continuation of existing supplemental power, wheeling, administrative and banking services being rendered by APS for MCM for an extended interim period of six months or upon execution of more comprehensive agreements, whichever date occurs first. Such services are currently provided to MCM under APS FERC Rate Schedule No. 157.

APS with the concurrence of MCM requests waiver of 18 CFR 35.11 and 35.3 so that the Agreement will become effective on July 1, 1988.

No change in rates, revenues or condition of service except extension of the term are proposed.

Copies of this filing have been served upon the Arizona Public Service Company and MCM.

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

13. Kansas City Power & Light Company

[Docket No. ER88-507-000]

July 11, 1988.

Take notice that on July 5, 1988, Kansas City Power & Light Company (KCPL) tendered for filing an Amendatory Agreement No. 1 to Municipal Wholesale Firm Power Contract, between KCPL and the City of Carrollton, Missouri dated June 1, 1988. KCPL states that the Amendatory Agreement provides for an extension of the contract term and a modified rate design for firm power service.

KCPL request an effective date of June 1, 1988, and therefore requests waiver of the Commission's notice requirements.

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

14. New York State Electric & Gas Corporation

[Docket No. ER88-508-000]

July 11, 1988.

Take notice that on July 5, 1988, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to § 35.12 of the regulations under the Federal Power Act, as a rate schedule, an agreement with GPU Service Corporation (GPU). The agreement provides that service will occur from time-to-time when either NYSEG or GPU have excess energy available to sell to the other Party and when the purchase of such excess would be economic for that other Party. This agreement will commerce on June 1, 1988 and can be terminated by either Party, upon no less than four (4) weeks prior written notice of termination.

NYSEG has filed a copy of this filing with GPU Service Corporation and the Public Service Commission of the State of New York.

NYSEG requests that the 60-day filing requirements be waived and that June 1, 1988 be allowed as the effective date of the filing.

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

15. West Texas Utilities Company

[Docket No. ER88-510-000]

July 11, 1988.

Take notice that on July 6, 1988, West Texas Utilities Company (WTU) tendered for filing twenty-nine (29) executed Delivery Point and Service specifications sheets providing for various minor changes to the Service Agreements between WTU and Brazos Electric Power Cooperatives, Inc., Concho Valley Electric Cooperative, Inc., Midwest Electric Cooperative, Inc., Southwest Texas Electric Cooperative, Inc., Stamford Electric Cooperative, Inc., and Taylor Electric Cooperative, Inc., executed under WTU's FERC Electric Tariff, Original Volume No. 1.

WTU states that copies of the filing have been sent to the Public Utility Commission of Texas and the affected full requirements wholesale customers.

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

16. Niagara Mohawk Power Corporation

[Docket No. ER88-497-000]

July 8, 1988.

Take notice that on June 30, 1988, Niagara Mohawk Power Corporation tendered for filing an agreement between Niagara Mohawk Power Corporation and Public Service Company of New Hampshire dated May 1, 1988.

The May 1, 1988 agreement is to provide for the sale by Niagara Mohawk Power Corporation of peaking capacity and related energy to Public Service Company of New Hampshire. The terms of this agreement and the period during which the purchase of Peaking Capacity can occur shall commence on May 1, 1988 and shall continue until October 31, 1988.

Copies of this filing were served upon Public Service Company of New Hampshire and the New York State Public Service Commission.

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

17. Niagara Mohawk Power Corporation

[Docket No. ER88-498-000]

July 8, 1988.

Take notice that on June 30, 1988, Niagara Mohawk Power Corporation tendered for filing an agreement between Niagara Mohawk Power Corporation and Boston Edison Company dated May 1, 1988.

The May 1, 1988 agreement is to provide for the sale by Niagara Mohawk Power Corporation of firm capacity and related energy to Boston Edison Company. The terms of this agreement and the period during which the purchase of Capacity and Energy can occur shall commence on May 1, 1988 and shall continue until October 31, 1988.

Copies of this filing were served upon Boston Edison Company and the New York State Public Service Commission.

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

18. Boston Edison Company

[Docket No. ER88-509-000]

July 11, 1988.

Take notice that on July 5, 1988, Boston Edison Company (Edison) tendered for filing updated charges to be paid by Cambridge Electric Light Company (Cambridge) for the support of Edison's Substation 509 located in North Cambridge, Massachusetts. These charges are filed pursuant to Boston Edison FPC Rate No. 101 approved by the Commission on March 11, 1975 in Docket No. E-9254.

Edison requests waiver of the Commission's notice requirements to permit these charges to be made effective as of July 15, 1988.

Edison states that it has served the filing on Cambridge Electric Light Company and the Massachusetts Department of Public Utlities.

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15938 Filed 7-14-88; 8:45 am]

BILLING CODE 6717-01-M

Docket Nos. CP88-429-000, et al.]

Pelican Interstate Gas System et al.; Natural Gas Certificate Filings

Take notice that the following filing have been made with the Commission:

1. Pelican Interstate Gas System

[Docket No. CP88-429-000]

July 8, 1988.

Take notice that on June 8, 1988, Pelican Interstate Gas System (Pelican), 1600 Smith Street, Suite 3075, Houston, Texas 77002, filed in Docket No. CP88-429-000 an application, as supplemented July 5, 1988, pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing Pelican to transport up to a maximum of 15,000 MMBtu of natural gas per day on an interruptible basis for the account of Pogo Producing Company (Pogo), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pelican has entered into a Gas Transportation Agreement dated May 25, 1988, to provide on an interruptible basis transportation of up to a maximum of 15,000 MMBtu per day of natural gas for Pogo for a primary term of one (1) year from May 25, 1988, and continuing month to month thereafter.

Pelican states that it will receive volumes of gas for the account of Pogo at the existing subsea interconnection of the pipeline facilities of Pelican and those of Pogo in West Cameron Block 210, Offshore Louisiana. Pelican proposes to transport and redeliver such gas at the existing onshore terminus of Pelican's pipeline facilities located at the Mobil Cameron Meadows plant in Cameron Parish, Louisiana.

It is stated that the gas to be transported by Pelican for Pogo will be sold to Pontchartrain Natural Gas System (Pontchartrain), a hinshaw pipeline with facilities in Louisiana, pursuant to a gas purchase agreement between Pogo and Pontchartrain dated June 23, 1988. It is further stated that pursuant to Section 311 of the Natural Gas Policy Act of 1978, either Columbia Gulf Transmission Company, ANR Pipeline Company or Natural Gas Pipeline Company of America will further transport the gas from the Mobil

Cameron Meadows plant and redeliver such gas to Pontchartrain for its system supply.

Pelican states that it proposes to charge Pogo a transportation fee of three and three-tenths cents (3.3 cents) per Mcf of gas received for transportation.

Comment date: July 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP88–481–000]

July 11, 1988.

Take notice that on June 20, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP88–481–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon service to Uniroyal Goodrich Tire Company, formerly B.F. Goodrich (Uniroyal), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle proposes to abandon the service to Uniroyal authorized in Docket No. CP61–36. Panhandle states that it delivers gas to Northern Indiana Fuel and Light Company (NIFL) in Allen County, Indiana for ultimate delivery to Uniroyal.

It is stated that Uniroyal has advised Panhandle that the service is no longer a required part of Uniroyal's operations. It is indicated that Panhandle and Uniroyal seek to terminate and abandon this service pursuant to a letter agreement dated June 8, 1987. No abandonment of facilities is proposed herein.

Comment date: August 1, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Michigan Consolidated Gas Company

[Docket Nos. CP88–464–000; CP88–509–000]

July 11, 1988.

Take notice that Michigan Consolidated Gas Company-Utility Divison (MichCon), 500 Griswold Street, Detroit, Michigan 48226 on June 13, 1988, in Docket No. CP88–464–000 applied pursuant to Sections 153.10 through 153.12 of the Commissions Regulations for a Presidential Permit and on June 24, 1988, in Docket No. CP88–509–000 pursuant to Section 3 of the Natural Gas Act applied for authorization for the siting, construction, connection, operation and maintenance of pipeline facilities at the international border between the United States and Canada, which will be used for the importation and exportation of natural gas, and the place of exit and entry for the imported and exported gas.

MichCon will construct the facilities, which will be called the Belle River-Bickford Pipeline, under an agreement with Union Gas Limited (Union) and St. Clair Pipeline Limited (St. Clair), both subsidiaries of Union Enterprises Limited and all of which are Canadian corporations. Union is a local distribution company located in Ontario, Canada, and St. Clair has been created for the purpose of constructing, owning and operating that portion of the pipeline from the Canadian riverbank to the international border. The new pipeline facilities will result in the interconnection of the transmission systems of MichCon and Union at a point on the international boundary under the St. Clair River.

The gas imported and exported will be done pursuant to an Exchange, Firm Transportation and Interruptible Transportation Agreements between MichCon and Union. In the Exchange Agreement the volumes will be up to 200,000 MMBtu's per day, and the exchange point will be at that point on the Bell River-Bickford Pipeline which is the international border between the U.S. and Canada. In the Firm Transportation Agreement the volume will be 15,000 MMBtu's per day for the first year, a minimum of 15,000 MMBtu's and up to 30,000 MMBtu's per day in the second year and a minimum of 15,000 MMBtu's per day and up 45,000 MMBtu's on the third and subsequent years of the Agreement. Under this agreement through year one through five Union may request transportation of an "Additional Quantity" of up to 33,333 MMBtu's per day. The receipt and delivery point will be Willow Run, Bell River and the international border. In the Interruptible Transportation Agreement the volume would be up to 2,200,000 MMBtu's at the same receipt and delivery point as stated in the Firm Transportation Agreement.

In this proposal MichCon will not act as the importer or exporter of natural gas under the Agreements. All deliveries of gas at the international border will be deemed to have been made one foot on the U.S. side of the Bell River-Bickford Pipeline.

The Bell River-Bickford Pipeline will be 3 miles of 24 inch O.D. pipeline.

Comment date: August 1, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. Tarpon Transmission Company

[Docket No. CP88–485–000]

July 11, 1988.

Take notice that on June 21, 1988, Tarpon Transmission Company (Tarpon), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP88–485–000 a request pursuant to §§ 157.205 and 284.223 of the Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Tejas Power Corporation (Tejas), a marketer, under the certificate issued in Docket No. CP88–89–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request with the Commission and open to public inspection.

Tarpon states that it proposes to transport natural gas from points of receipt located near the Eugene Island area, Blocks 380 and 381, Offshore Louisiana to a point of delivery located in Block 274 of the Ship Shoal area, South Addition, Offshore Louisiana.

Tarpon further states that the maximum daily and annual quantities that it would transport for Tejas would be 40,000 MMBtu equivalent and 4,745,000 MMBtu equivalent, respectively.

Tarpon indicates that in Docket No. ST88–4021–000, filed with the Commission on June 1, 1988, it reported that transportation service for Tejas commenced on May 3, 1988 under the 120-day automatic authorization provisions of § 284.233(a).

Comment date: August 25, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Panhandle Eastern Pipe Line Company

[Docket No. CP88–490–000]

July 11, 1988.

Take notice that on June 23, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O Box 1642, Houston, Texas 77001, filed in Docket No. CP88–490–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon jurisdictional sales service provided to Columbia Gas Transmission Corporation (Columbia), all as more fully set forth in application which is on file with the Commission and open to public inspection.

It is stated that Panhandle currently provides a quantity of 255,000 Mcf of natural gas per day of firm sales service to Columbia. It is alleged by letter dated April 24, 1987, in accordance with Article 5 of the Gas Sales Contract dated September 1, 1973, (Contract)

Panhandle served notice to Columbia of cancellation of the Contract effective October 31, 1988 (Termination Notice). Is is asserted that by letter dated June 2, 1988, Columbia notified Panhandle that it no longer requires sales service from Panhandle thereby accepting and confirming the Termination Notice. It is further asserted that there would be no abandonement of facilities, only the jurisdictional sales service is being discontinued as requested by Columbia. It is alleged that Columbia indicates that at the present time it does not require "replacement" service from Panhandle. The facilities presently in place would be used to provide transportation service as may be required by Columbia and other shippers.

Panhandle state that it has not as yet mede an election pursuant to Order No. 500 with respect to the resolution of take-or-pay obligations. It is stated that this matter would be the subject of a future filing with the Commission. It is further stated that the proposal is with prejudice to Panhandle's rights to recover the appropriate residual costs associated with this service and any amount due and payable pursuant to the service provided under the Contract.

Pandhandle submits that the proposed abandonment of service is in the public interest because such is at the request of Columbia.

Comment date: August 1, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear to be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15996 Filed 7-14-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-551-000 et al.]

United Gas Pipeline Company et al.; Natural Gas Certificate Filings

July 13, 1988.

Take notice that the following filings have been made with the Commission:

1. United Gas Pipeline Company

[Docket No. CP88-551-000]

Take notice that on July 7, 1988, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251 filed in Docket No. CP88-551-000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas for Amoco Production Company (Amoco). United explains that service commenced May 4, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-4367. United explains that the peak day quantity would be 30,900 dekatherms, the average daily quantity would be 30,900 dekatherms, and that the annual quantity would be 11,278,500 dekatherms. United explains that it would receive natural gas for Amoco's account at an existing interconnection between United and Sea Robin Pipeline Company (Sea Robin) in Vermilion Parish, Louisiana. United states that it would redeliver the gas for Amoco's account at an existing interconnection between United and Dow Intrastate Gas Company in Lafayette Parish, Louisiana.

Comment date: August 29, 1988, in accordance with Standard Paragraph G at the end of the this notice.

2. Tennessee Gas Pipeline Company

[Docket No. CP88-522-000]

Take notice that on June 27, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252-2511, filed in Docket No. CP88-522-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity for authorization to provide standby service to its Rate Schedules CD, G and GS customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that the proposed standby service would allow Rate Schedules CD, G and GS customers that convert a portion of their firm sales entitlement to firm transportation service to elect standby service equivalent to the amount of service converted, not to exceed fifty percent of the lesser of the customer's original or reduced sales entitlement. Tennessee states that a customer's election to receive standby service would be made at the same time the customer notifies Tennessee of its intent to exercise its conversion rights under § 284.10 of the Regulations. Further, the customer may choose on any day to receive gas transportation service or gas sales service, or any combination of those services within the customer's elected standby service entitlement, it is stated.

Tennessee states that the gas transportation service would be pursuant to its Rate Schedule FT-A and the gas sales service would be pursuant to the terms of the applicable Rate Schedules CD, G or GS. Tennessee states that the Reservation Charge under Rate Schedule FT-A which would otherwise be applicable to conversion

customers would be waived to the extent the customer has elected standby service. Rate Schedules CD and G customers would instead pay a demand charge under those rate schedules, calculated on the customer's firm sales plus standby service entitlement, it is stated. Tennessee states that for transportation service within standby entitlement, Rate Schedules CD and G customers would pay the Standby Transportation Commodity Rate and Rate Schedule GS customers would pay a one-part Standby Transportation Commodity Rate. Tennessee states that firm sales service within standby entitlement would be provided at the applicable Rate Schedules CD, G and GS commodity and gas rates.

Comment date: August 3, 1988, in accordance with Standard Paragraph F at the end of the this notice.

3. Great Lakes Gas Transmission Company

[Docket No. CP88–539–000]

Take notice that on July 1, 1988, Great Lakes Gas Transmission Company (Applicant), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP88–539–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Great Lakes to provide gas transportation service on a firm basis along with overrun service for Consumers Power Company (Consumers), a Michigan gas distribution company, and POCO Petroleums Ltd. (POCO), a Canadian supplier, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that Consumers and POCO have requested that Great Lakes transport up to 50,000 Mcf and 15,000 Mcf, per day, respectively, for an initial contract quantity, and up to 59,000 Mcf and 25,000 Mcf per day, respectively, effective November 1, 1989, as the increased contract quantity. Applicant indicates that it also proposes to provide overrun service if mutually agreed upon by the parties. Great Lakes states that it would receive the gas at a point on the international boundary at Emerson, Manitoba, and transport the gas to an existing point of interconnection between the facilities of Great Lakes and ANR Pipeline Company, located at Fortune Lake, Michigan. Applicant indicates that both the POCO and Consumers volumes would be utilized by Consumers for its system supply.

Great Lakes states that it has entered into transportation service agreements with Consumers and POCO each dated May 25, 1988, which provide for a 15-year term for the firm and overrun service. It is indicated that the agreements also provide for rates of monthly Demand-1 charge of $1.086 per Mcf of contract quantity, Demand-2 charge of 3.572 cents per Mcf multiplied by one-twelfth of the annual contract quantity, and commodity charge of 15.195 cents per Mcf for volumes received for transportation under the agreements. Applicant states that these demand and commodity charges represent the transportation components of Rate Schedule CQ–2 of Great Lakes' FERC Gas Tariff, under which volumes are also transported from the international boundary near Emerson, Manitoba to the Fortune Lake, Michigan interconnection.

Applicant also proposes an overrun charge equal to Applicant's 140 percent load factor rate, as determined for the demand and commodity components as noted above.

It is indicated that no new facilities are required to provide the proposed service of Consumers and POCO.

Comment date: August 3, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. United Gas Pipeline Company

[Docket No. CP88–553–000]

Take notice that on July 7, 1988, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251 filed in Docket No. CP88–553–000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas for Mobil Oil Exploration and Producing Southeast, Inc. (Mobil). United explains that service commenced May 4, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88–4370. United explains that the peak day quantity would be 103,000 dekatherms, the average daily quantity would be 103,000 dekatherms, and that the annual quantity would be 37,595,000 dekatherms. United explains that it would receive natural gas for Mobil's account at an existing interconnection between United and Sea Robin Pipeline Company (Sea Robin) in Vermilion Parish, Louisiana. United states that it would redeliver the gas for Mobil's account at an existing interconnection between United and Florida Gas Transmission Company in St. Landry Parish, Louisiana.

Comment date: August 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP88–536–000]

Take notice that on June 30, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP88–536–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate a one-inch sales tap near Covington, St. Tammany Parish, Louisiana, under the blanket authorization issued in Docket No. CP82–430–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which in on file with the Commission and open to public inspection.

United states that the new sales tap would enable United to supply an estimated average of one Mcf of natural gas per day to Entex Inc., under United's Rate Schedule DG–N, for resale to Mrs. Patricia R. Strain's residence near Covington, St. Tammany Parish, Louisiana. United further states that it would construct the proposed sales tap on its existing 10-inch tie-over to the Bogalusa Junction-Amite lateral main line near Covington. According to United, Entex would reimburse United for the construction cost of the proposed sales tap. Finally, United states that it has sufficient capacity to render the herein proposed service without detriment or disadvantage to its other existing customers.

Comment date: August 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to

intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without forther notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rules 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15997 Filed 7-14-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-55-038]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

July 11, 1988.

Take notice that on July 6, 1988, Transcontinental Gas Pipe Line Corporation (Transco) filed in the captioned proceeding certain revised tariff sheets to Second Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff. The proposed effective dates of the revised tariff sheets are October 1, and November 1, 1987: January 1, February 1, April 22, May 1, June 1, and August 1, 1988.

Transco states that the purpose of the instant filing is to revise Transco's sales and transportation rates to reflect the cost allocation and rate design methodology approved for the Transco system by the Commission in Opinion Nos. 260 and 260-A issued in this docket on December 30, 1986 and August 19, 1987, respectively, as modified by the Commission's October 16, 1987 order on rehearing, and the October 19, 1987 and December 10, 1987 letter orders of the Director, Office of Pipeline and Producer Regulation, which letter orders rejected Transco's compliance filings herein of September 18, 1987, and November 3, 1987, respectively. In that regard, the instant filing is submitted in accordance with Ordering Paragraph (B) of the Commission's Order Denying Appeals of Staff Action issued June 6, 1988 in Docket No. RP82-55-033, wherein the Commission directed Transco to file revised tariff sheets in full compliance with Opinion Nos. 260 and 260-A within thirty days of the issue date of its order.

Transco further states that the revised compliance rates contained herein are based on the cost of service and billing determinants contained in: Transco's compliance filing of April 1, 1987 in Docket No. RP87-7-007 which was accepted to become effective on said date by the Commission's order issued May 20, 1987, *Transcontinental Gas Pipe Line Corporation*, 39 FERC 61, 189 (1987); Transco's compliance filing of August 21, 1987 in Docket No. RP87-7-021 (reflecting the reduction in the corporate Federal income tax rate) which was accepted to become effective July 1, 1987 by letter order issued September 24, 1987; and Transco's August 31, 1987 filing in Docket No. RP87-117-000 of revised tariff sheets to provide for collection from its sales and transportation customers of an Annual Charge Adjustment (ACA) of 0.20 cents per dt, which was accepted to be effective October 1, 1987 by an order of the Director of the Office of Pipeline and Producer Regulation issued September 29, 1987 in *Algonquin Gas Transmission Company, et al.*, Docket Nos. RP87-109-000, *et al.*, Appendix B to the filing contains an Mcf-mile study and schedules supporting the derivation of the revised sales and transportation rates included in the filing.

Transco also states that the base tariff rates contained in the revised sheets proposed to be effective October 1, 1987 are based on (i) the non-gas cost component of the rates and mileaging of fuel derived in accordance with Opinion Nos. 260 and 260-A and (ii) the cost of gas and fuel (including where applicable the unit rates attributable to demand charges paid to Esso Canada Limited, formerly Sulpetro Limited) which was effective pursuant to Transco's filing of May 29, 1987 which was approved by the Commission's letter order issued July 16, 1987 in Docket No. TA85-1-29-012, *et al.*

Transco states that copies of the filing are being mailed to each of its customers, State Commissions and interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protest should be filed on or before July 18, 1988. Protests will be considered by the Commission in determining the appropriation action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15936 Filed 2-14-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3415]

Environmental Impact Statements and Regulations; Availability of EPA Comments Prepared June 27, Through July 1, 1988

Availability of EPA comments prepared June 27, 1988 through July 1, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Request for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5074.

An explanation of the rating assisgned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318)

Draft EISs

ERP No. D-BLM-J365147-WY. Rating EO2, Cody Resource Area Land Management Plan, Implementation, Big Horn and Park Counties, WY.

Summary

EPA has concerns with the extensive amount of deteriorated wetland/riparian

areas and systems in the planning area. Further, EPA finds insufficient information and commitments for meeting surface water quality standards, controlling produced water discharges, and protecting ground water. Standards and guidelines for achieving wetland/stream objectives and for the Clean Water Act monitoring need to be improved.

ERP No. DS–CGD–C50010–NT, Rating EC2, Davids Island Residential Development, Marina and Bridge Access from New Rochelle Mainland and Davids Island Construction, Updated Information and Design Modifications, Bridge and 404 Permits, City of New Rochelle, Long Island Sound, Westchester County, NY.

Summary

EPA's previous objections to the proposed project have been adequately addressed. Although, EPA still has outstanding concerns regarding marine habitats, water quality, and air quality. EPA has requested additional information in the final EIS to address these concerns.

ERP No. D–COE–J36042–ND, Rating 3, Devils Lake Basin, Flood Control and Related Purposes Project, Implementation, Benson, Eddy, Nelson, Walsh, Cavalier, Towner, Rolette, Pierce and Ramsey Counties. ND.

Summary

EPA concludes that the draft EIS is inadequate to meet the purposes of NEPA because it lacks demonstration of a feasible operating plan to attain water quality standards, lack an adequate wetlands mitigation plan, does not analyze water quality impacts in Devils Lake and downstream, and does not provide biological date to adequately explain the purpose and need for the connecting channel or the eastern outlet. EPA recommends a revised or supplemental draft EIS be prepared that corrects these deficiencies according to the provisions of 40 CFR 1502.9.

ERP No. D–FHW–D40233–VA, Rating EC2, VA–642/Hoadly Road Improvements, VA–234 to VA–641, Funding, Prince William County, VA.

Summary

EPA is concerned that this document does not specify many of the impacts directly associated with each build alternative, making it difficult to compare and evaluate the alternatives. Groundwater contamination resulting from the project is also of concern. Furthermore, the final EIS must present stronger evidence concerning the need and the potential benefits of the project.

Dated: July 12, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88–16004 Filed 7–14–88; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3414–9]

Environmental Impact Statements; Availability of Environmental Impact Statements Filed July 4, 1988 Through July 8, 1988

Responsible Agency

Office of Federal Activities General Information (202) 382–5074 or (202) 382–5076.

EIS No. 880217, Draft, AFS, NM, Las Huertas Canyon Land and Resource Management Plan. Implementation, Cibola National Forest Bernalillo and Sandoval Counties, NM, Due August 29, 1988, Contact: Jimmy E. Hibbetts (505) 275–5207.

EIS No. 880218, Final, FHW, MD, MD–5/Branch Avenue Improvement, North of I–95 to South of US 301, Funding and 404 Permit, Prince Georges County, MD, Due: August 15, 1988, Contact: Edward Terry (301) 962–4010.

EIS No. 880219, Final, COE, WA, Puget Sound Unconfined Open-Water Disposal Sites for Dredged Material, Phase 1 (Central Puget Sound), Site Identification and Sections 10 and 404 Permits, San Juan, Mason, Thurston, Island, Jefferson, Whatcom, Skagit, and Snohomish Counties, WA, Due: August 15, 1988, Contact: Frank Urabeck (206) 764–3708.

EIS No. 880220, DSuppl, SFW, AK, Becharof National Wildlife Refuge Management Plan, Wilderness Recommendations, Designation or Nondesignation, AK, Dur: August 29, 1988, Contact: William Knauer (907) 786–3399.

EIS No. 880221, Draft, FAA, MD, 15L/33R Runway Extension, Baltimore/Washington International Airport, Approval and Funding, Anne Arundel County, MD, Due: August 29, 1988, Contact: Frank Squeglia (718) 917–0902.

EIS No. 880222, Final, FHW, WA, I–405 Contruction, South Renton Interchange to Sunset Interchange, Funding and Section 10 Permit, City of Renton, King County, WA, Due: August 15, 1988, Contact: P.C. Gregson (206) 753–2120.

EIS 880223, DSuppl, FHW, VT, US 189 Contruction Improvements, Utah Valley to Heber Valley Project, US 189 Widening and Realignment, UT–52 to US 40, Funding and 404 Permit, Utah and Wasatch Counties, UT, Due: September 15, 1988, Contact: Donald W. Killmore (801) 524–5141.

EIS No. 880224, DSuppl, SFW, AK, Alaska Peninsula National Wildlife Refuge Management Plan, Wilderness Recommendations, Designation or Nondesignation, AK, Due: August 30, 1988, Contact: William Knauer (907) 786–3399.

EIS No. 880225, Final FRC, RI, NY, MA, Ocean State Power Project, Natural Gas Fired Combined-Cycle Power Plant and Pipeline Construction and Operation, Licenses and sections 10 and 404 Permits, Providence County, RI; Erie, Livingston, Onondaga, Niagara, Rensselaer and Wyoming Counties, NY and Hampden and Worcester Counties, MA, Due: August 15, 1988, Contact: Lonnie Lister (202) 357–8874.

Dated: July 12, 1988.

Wiliam D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88–16003 Filed 7–14–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3414–8]

A.Y. McDonald Site: Proposed Settlement

AGENCY: Environmental Protection Agency:

ACTION: Notice of Proposed Settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for past and oversight costs at the A.Y. McDonald Site, Dubuque, Iowa. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Nancy J. Johnson, Regional Project Manager, U.S. EPA, Region VII, Compliance Section, Superfund Branch, Waste Mangement Division, 726 Minnesota Ave., Kansas City, Kansas 66101, (913) 236–2856.

Written comments may be submitted to the person above by August 15, 1988.

Date: July 7, 1988.

Carl V. Blomgren,

Acting Waste Management Division Director.

[FR Doc. 88–15926 Filed 7–14–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL-3414-6]

Babb Drum Site; Proposed Settlement

AGENCY: Environmental Protection Agency:

ACTION: Notice of Proposed Settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the the Babb Drum Site, Little Chicago, South Carolina. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Rosalind Brown, Life Scientist, U.S. EPA, Region IV, Investigations and Cost Recovery Unit, Investigation Support Section, Site Investigation and Support Branch, Waste Management Division, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404/347-5059.

Written comments may be submitted to the person above by August 15, 1988.

June 24, 1988.

Greer C. Tidwell,

Regional Administrator.

[FR Doc. 88-15927 Filed 7-14-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3414-4]

Public Hearing on Proposed 404(C) Determination To Withdraw, Deny, or Restrict the Specification or Use of Portions of Hurricane Creek Floodplain and Portions of Unnamed Tributaries of Hurricane Creek

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Section 404(c) Determination and Notice of Public Hearing.

SUMMARY: EPA Region IV is proposing to take action under Section 404(c) of the Clean Water Act (CWA) to prohibit deny, or restrict specification or use of certain Hurricane Creek area waters near the City of Alma in Bacon County, Georgia, as a disposal site for dredged or fill materials in connection with contruction of Lake Alma, a proposed 1,400-acre recreational lake project. The waters of the United States which are subject to the proposed 404(c) action include a segment of Hurricane Creek extending 7.2 miles upstream of a point approximately 4,000 feet south of Georgia Highway 32 (the planned location of the main Lake Alma dam), certain unnamed tributaries flowing into Hurrican Creek, and the wetlands lying adjacent to both the creek segment and these tributaries. This section 404(c) determination is being proposed because EPA Region IV has reason to believe that filling and inundating the above-described waters, including wetland, would have an unacceptable adverse effect on wildlife habitat. In accordance with EPA regulations at 40 CFR 231.4, the Regional Administrator has decided that a hearing on this proposed 404(c) determination would be in the public interest.

Purpose of Public Notice

The Regional Administrator of Region IV is giving notice of this proposed Section 404(c) action and of a public hearing to consider the action. EPA Region IV is soliciting information and observations about whether filling or inundating the above-described Hurricane Creek waters, including wetlands, would have an unacceptable adverse effect on wildlife habitat.

Hearing Date

August 30, 1988, beginning at 7:00 P.M.

Hearing Location

Bacon County High School Gymnasium, 202 East Fourth Street, Alma, Bacon County, Georgia.

Comments may be submitted prior to the hearing or presented orally and/or in writing at the hearing. The hearing record will remain open after the hearing until close of business September 13, 1988, for receipt of written comments. Written comments or requests for copies of the proposed determination may be submitted to EPA Region IV's designated Record Clerk, Suzanne Potter, Office of Congressional and External Affairs, EPA, 345 Courtland Street, Atlanta, Georgia 30365, (404) 347-3004. Comments should directly address whether EPA Region IV's proposed determination should become the Agency's final determination or whether corrective action could be taken to reduce the adverse impact of the discharge. All such comments will be considered by EPA Region IV in reaching a decision either to withdraw the proposed determination or make a recommended determination to prohibit, deny, or restrict the specification or use of all or portions of the Hurricane Creek floodplain and tributaries as disposal sites for reservoir construction. Any recommendation from Region IV together with the administrative record will be forwarded to the EPA Assistant Administrator for Water in Washington, DC, for review and the final determination. The procedures to be used in making the final determination are specified at 40 CFR 231.6.

Copies of all comments submitted in response to this notice will be available for public inspection during normal working hours (8:00 a.m. to 5:00 p.m.) at the EPA, Region IV office in Atlanta.

Individuals with handicaps requiring special assistance at the public hearing should contact Ms. Suzanne Potter at (404) 347-3004 by August 10, 1988, so that reasonable accommodations may be made.

Hearing Procedures

a. The Regional Administrator of EPA, Region IV has designated the Deputy Director of the Region's Water Management Division, Mr. Al J. Smith, to be the Presiding Officer at the hearing.

b. Any person may appear at the hearing and submit oral and/or written statements or data and may be represented by counsel or other authorized representative. Any person may present written statements or recommendations to be included in the hearing file prior to the time the hearing file is closed to public submissions. The Presiding Officer will afford the participants an opportunity for rebuttal.

c. The Presiding Officer will establish reasonable limits on the nature, amount, or form of presentation of documentary material and oral presentations. There will be no cross examination of any hearing participant. Because it appears likely that a number of persons may want to make oral statements during the limited time available for this hearing, those persons wishing consideration of lengthy statements should be prepared to submit them in writing.

d. The hearing file will be open for submission of written comments until close of business on September 13, 1988.

Supplemental Information and Background

A. Section 404(c) Procedure and Criteria

Under Section 404 of the CWA (33 U.S.C. 1251 *et seq*), any person who proposes to discharge dredged or fill material into the waters of the United States, including wetlands, must first obtain a permit from the Secretary of the Army, acting through the Chief of Engineers. However, CWA Section 404(c) authorizes the EPA Administrator to prohibit or restrict such permitting within any area defined by him if he determines after notice and opportunity

for public hearing that discharges of dredged or fill material there would have an unacceptable adverse effect on municipal water supplies shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. EPA's procedures for implementing Section 404(c) are set forth in 40 CFR, Part 231.

Under § 231.3 of the regulations, Section 404(c) proceedings begin when the Regional Administrator issues a proposed determination that a site should be prohibited, withdrawn, or restricted for use as a disposal site because of unacceptable adverse environmental effects. This proposed determination does not represent a judgment that discharge of dredged or fill material will result in unacceptable adverse effects; it merely means that the Regional Administrator believes that the issue should be explored. The Regional Administrator then consults with the Corps; if no corrective actions are agreed upon, he issues a public notice, inviting public comments on the proposed determination. The Corps has agreed that if there is a permit application pending, such notice will serve to stay its issuance of the permit.

If there is enough interest, the Regional Administrator or his designee holds a public hearing under § 231.4 to supplement the public comments. After the comment period and the hearing, if one is held, the Regional Administrator or his designee reviews the information available to him and decides whether to withdraw his proposed determination to prohibit, restrict or withdraw a site. If he withdraws the proposed determination, he gives public notice of that step, and the matter drops (unless the Administrator decides to review). Otherwise the Regional Administrator or his designee sends a "recommended determination," and the record on which it was based, to the Administrator for a "final determination." The Administrator or his designee then reviews that material, and makes a final determination whether a discharge of dredged or fill material will result in unacceptable adverse effects warranting the prohibition or restriction of the disposal site. This determination and reasons therefore are then made public.

These regulations define "unacceptable adverse effect" in § 231.2(e) as:

> Impact on aquatic or wetland ecosystem which is likely to result in significant degradation of municipal water supplies or significant loss of or damage to fisheries, shellfishing, or wildlife habitat or recreation areas. In evaluating the unacceptability of such impacts, consideration should be given to the relevant portions of the Section 404(b)(1) Guidelines (40 CFR Part 230).

The preamble to 40 CFR Part 231 explains that one of the basic functions of section 404(c) is to police the application of the Section 404(b)(1) Guidelines. Those portions of the Guidelines relating to significant degradation of waters of the United States (40 CFR 230.10(c)), as well as consideration of cumulative impacts (40 CFR 230.11(g)), are of particular importance in the evaluation of the unacceptability of environmental impacts in this case. Section 230.10(c) of the Guidelines requires that no discharge of dredged or filled material shall be permitted that contributes to significant degradation of waters of the United States. § 230.10(d) requires that no discharge of dredged or fill material shall be permitted unless appropriate steps have been taken which will minimize potential adverse impacts. Within the decision-making process, § 230.11(g) requires that the permitting authority collect, analyze, consider, and document information relevant to cumulative impacts resulting from the subject action. Thus, it is appropriate under Section 404(c) to take into account whether significant degradation of waters of the United States will occur as a result of individual and/or cumulative fill activities and whether appropriate steps have been taken to minimize adverse impacts.

The Administrator's Section 404(c) authority may be used either to veto a permit which the Corps has determined it would issue (as in the case of the mitigation application described below) or to withdraw an issued permit (as in the case of the 1981 permit for the reservoir construction noted below). Under his Section 404(c) authority, the Administrator may totally prohibit all discharges of dredged or fill material in a defined area or he may impose some partial prohibition, such as a restriction on discharges from a particular type of activity. This proposed Section 404(c) determination is limited to a prohibition on discharges resulting from lake and reservoir construction for the above mentioned sites.

B. Nature of Proposed Discharge (Project Description).

As indicated above, the discharges being proposed are intended to create a recreational lake covering some 1400 acres by means of damming Hurricane Creek and thereby causing the flooding of adjacent tributary and wetland areas. In November 1981, the Corps of Engineers issued Section 404 Permit No. 074 OYN 003752 to the applicant, City of Alma/Bacon County, for discharges required for construction of an earthen dam and spillway. This permit authorized the discharge of 412,000 cubic yards of fill material into Hurricane Creek and its adjacent wetlands to create Lake Alma. The placement of fill and the resultant impoundment would have destroyed or inundated approximately 1200 acres of floodplain wetlands and other waters.

Construction of the proposed lake was delayed, however, by a 1983 decision of the Eleventh Circuit Court of Appeals. This decision held that a Supplemental Environmental Impact Statement (SEIS) was required to evaluate the impacts of the proposed "greentree reservoirs" plan which had been developed to mitigate some of the adverse effects of lake construction (see "Project History" section below). After completion of this SEIS, the Corps of Engineers indicated its intent in May of this year to issue a second Section 404 permit to the City of Alma/Bacon County (Application No. 074 OYN 006129) authorizing additional discharges needed to implement this mitigation plan.

This second permit would allow discharge of an additional 99,030 cubic yards of fill material for the purposes of constructing 14 earthen dams and an emergency access road. The proposed dams would create 14 greentree reservoirs (forested impoundments) with an aggregate surface area of approximately 194 areas in tributaries to Hurricane Creek. The purpose of the impoundments would be to provide partial mitigation for habitat losses that would result from impounding Hurricane Creek. The construction of these 14 greentree reservoirs would enhance approximately 137 acres of existing wetlands and create 23 acres of new wetlands, primarily to attract waterfowl. Additional habitat improvement is planned for the upland portions (714 acres) of the project site. However, 35 acres of existing wetlands would be filled or flooded by the greentree reservoirs and an additional .5 acre would be filled during construction of the emergency access road. Implementation of the mitigation plan would entail the net loss or degradation of 12.5 acres of existing wetlands.

C. Characteristics and Functions of the Project Site.

Hurricane Creek, located in the Georgia coastal plan, is part of the Satilla River drainage system. The Creek drains a 228 square mile watershed which has been developed primarily for farming and forestry. The 1,000- to 2,000-foot wide floodplain is

well defined but not deeply incised into the constituent sands and abundant organic matter. The main channel is often braided with three or four separate channels. Where the channel is defined it has an average width of 40 to 60 feet and a depth of 2 to 3 feet. Deeper pools retain water even during no-flow conditions. Mean daily flow in Hurricane Creek is estimated at 112 cubic feet per second (cfs); however, flows range from 0 cfs during extended droughts to peak flows of 4450 cfs (1953) or greater during storm events. The creek contains a diverse fish community (25 species) and a supporting snag and drift macroinvertebrate community.

The proposed Lake Alma site encompasses approximately 1350 acres of bottomland hardwoods, e.g., forested floodplain areas including the bay swamp community in the Hurricane Creek floodplain and branch swamp communities in the drainageways to Hurricane Creek. The wetlands along this 7.2 mile reach of the Creek are relatively undisturbed. As such, they provide high quality, diverse habitat for fish and wildlife, a travel corridor for upland and wetland animals, food web production for on-site and downstream biological communities, nutrient and pollutant uptake and assimilation, floodwater storage, and flow moderation. Additionally, they serve as an environment for outdoor activities including fishing, hunting, and bird watching as well as other nature-oriented activities.

The major floodplain plant communities include nearly mature bay swamp and branch swamp associations. The bay swamp community is located in the main floodplain of Hurricane creek where soils consist primarily of alluvial deposits. The community is characterized by broadleaf evergreen and deciduous hardwood species that are adapted to periodic inundation. Overstory trees include sweetbay, loblolly bay, swamp redbay, red maple, swamp blackgum, sweetgum, water oak, cypress, ogeechee plum, and black willow.

The branch swamp communities are located in the drainageways leading to the main floodplain. They are similar in composition to the bay swamps but have a greater number of deciduous trees and shrubs and more abundant understory vegetation. Understory vegetation includes sweetpepper bush, greenbriar, honey suckle, privet, saw palmetto, muscadine, and wildgrape. Pitcher plant bogs are located at the edge of the floodplain at sites where seepage from adjacent uplands occurs. The bogs contain trumpet pitcher plant and hooded pitcher plant which are classified as threatened within the State of Georgia. Adjacent to the floodplain are less diverse plant associations including sandhill, upland pine, pine plantation, and cleared or abandoned fields.

The forested wetlands which would be lost to project construction are part of an intact, functioning system that has specifically adapted to the pulsed hydrologic regime of Hurricane Creek and its tributaries. A variety of contiguous habitats are created within the floodplain by natural fluctuations in water levels including forested wetlands, braided stream channel, remnant pools, hummocks, and floodplain-upland interface. This segmentation of the environment allows the bottomland hardwoods to support aquatic, semiaquatic, and terrestrial animal communities. Vertical stratification of the forest canopy, subcanopy, and ground cover also contributes to habitat diversity. Hence, the floodplain is used by fish and wildlife as a resting, breeding, rearing, and feeding area as well as a travel corridor in an area surrounded by low quality wildlife habitat such as urban, agricultural, and pine plantation areas.

In fact, the bulk of primary (plant) and secondary (animal) production is accomplished during the seasonal inundation of the creek swamp floodplain. Further, leaf biomass produced by the trees and shrubs provides the trophic basis for the diverse fish and wildlife communities both on the project site and downstream. The mixed hardwood tree community within the proposed project site is conducive to a diversity of wildlife because the tree species have various periods of fruition resulting in staggered mast (acorn and seeds) and fruit production. This makes food available for a variety of wildlife throughout the year. As these trees mature, their habitat value and food production will increase.

Wetlands in Hurricane Creek play a role in maintaining and/or improving water quality, as well as regulating water quantity. Pollutants from agricultural, silvicultural, and urban activities in the watershed are trapped, assimilated, or transformed within the diverse substrates and microclimates provided by the wetlands. Water temperatures in the creek and remnant pools are modulated by the shading effects of the forest canopy. Wetland trees and shrubs retard floodwaters, which are temporarily stored in the floodplain. This situation tends to decrease downstream flood stages. During drier times of the year, water stored in the spongy organic substrate of the wetlands is released, contributing to stream base flows.

As noted, creek swamps such as this gum-bay-maple assemblage are among the most productive wildlife habitats in the coastal plain. Moreover, they are becoming increasingly valuable due to the rate at which these freshwater forest communities are being lost in the Southeast through agricultural/silvicultural development, drainage projects, and impoundments. By recent estimates, over 7,300 acres of wetlands, mostly freshwater types, are being destroyed each year in the State of Georgia. Hence, the impacts of the Lake Alama Project cannot be viewed in isolation.

D. Adverse Impacts of Permit Issuance

Constructing the main dam, clearing the floodplain, and impounding Hurricane Creek to create an artificial lake will destroy or inundate a 1,350-acre section of a productive floodplain forest and blackwater creek system. This loss represents approximately 35 percent of the total wetlands in the Bacon County portion of the Hurricane Creek watershed. Virtually all of the diverse forested habitat that now exists in the 7.2 mile reach of the floodplain will be destroyed. The proposed Lake will physically eliminate all of the forest-stream-pool habitat and the floodplain community which has adapted to periodic flooding. Wetlands immediately downstream from the dam would be partially dewatered by the proposed structure. Succession to more upland plant communities may eventually occur. Depending on the Lake discharge regime, floodplain wetlands further downstream may be similarily affected. Reduction of detrital export will reduce overall productivity and/or alter species composition of downstream animal communities.

The dam and Lake will permanently block the Hurricane Creek floodplain. Since the floodplain functions as a travel corridor for wildlife, this would disrupt animal and fish movement patterns. Animals currently living on the Lake site or migrating through it will either be killed or forced into adjancent lower quality, upland habitat. There they will have to compete for available food and habitat with the present upland animal communities. This competition may result in temporary disruptions of animal communities and lowered overall population levels, thereby adversely affecting indigenous wildlife.

Although 230 acres of forested wetlands in the upstream end of the proposed reservoir and in several embayments will remain after being selectively timbered (a 75% reduction in tree stems) much of the present wetland value of this area will be destroyed or degraded especially after the remaining trees die from the effects of continuous flooding (3 to 6 foot depth). These areas then will function primarily as scrub-shrub backwater areas of the lake, subject to irregular drawdowns.

The existing forested wetlands will be replaced by a shallow recreational lake with a depth ranging from 3 to 19 feet that contains standing water habitat primarily for fish and bottom dwelling organisms. During the initial few years, the lake should be relatively productive, but thereafter lower productivity may limit its value as a sports fishery. Moreover, it is anticipated that fish species diversity would decline since the project would transform a stream fishery into a still water lake fishery. Approximately 180 acres at the periphery of the proposed lake may develop aquatic weed growth that should provide some habitat for aquatic and semiaquatic animals, but may limit the recreational value of the lake. Anticipated week control programs—rimming, chemical applications and periodic drawsdowns—will reduce the value of this shallow water habitat.

EPA Region IV believes that the destruction of 1,350 acres of relatively undistrubed bottomland hardwoods may constitute significant degradation of the waters of the United States. Forested wetlands and the valuable fish and wildlife habitat they provide have been rapidly declining in the Southeast during the last four decades. On the other hand, flatwater habitat, such as lakes, reservoirs, ponds, and mining pits, has increased. The anticipated wetlands loss represents a substantial portion of the wetlands in the Hurricane Creek watershed and is regionally significant.

While the possibility of unacceptable wildlife habitat losses serves as the primary basis of this proposed 404(c) determination, EPA Region IV has other concerns about the proposed project. These include the effects of nutrient loadings from the Hurricane Creek watershed on water quality in the proposed Lake, especially during warm season, low flow periods; the effects of aquatic weed growth/die-out cycles on the water quality and the recreational value of the Lake; and the effects over the long-term on downstream wetlands and stream communities from changes in flood regime and detrital export.

A mitigation plan has been developed which includes: (1) The construction of 14 small greentree reservoirs (194 acres of forested impoundments) in drainageways adjacent to and upstream from the lake site, (2) tree plantings, and (3) a water management scheme to periodically flood and drain the reservoirs. These forested impoundments are designed primarily to enhance or create water fowl habitat, although other wildlife will also benefit.

Construction of the greentree reservoirs and an access road would destroy or permanently flood 35 acres of existing forested wetlands in the drainage ways. Only 23 acres of new wetlands would be created. The greentree reservoirs would have to be managed regularly and, almost certainly, would require a rigorous beaver and muskrat control program to keep them functioning. Mast producing trees will be planted in the greentree reservoirs to improve food supplies for wildlife. However, these benefits will not be realized fully until the trees reach maturity many years after planting.

The 194 acres of habitat which the greentree resrvoirs would either create or enhance represent only a very small portion of the wildlife habitat which the project would destroy. According to a 1978 Habitat Evaluation Procedure (HEP) conducted by the U.S. Fish and Wildlife Service, only 13 percent of the wetland habitat units lost by lake construction would be replaced by the mitigation plan. Most of the other functions and values of the forested floodplain wetlands, e.g., leaf litter export and travel corridor, etc., would not be replaced and would be irreparably lost. Although 714 acres of upland habitat surrounding the reservoir would be enhanced as part of the mitigation proposal, the enhancement of uplands will not replace any wetland habitat or other wetland functional losses associated with Lake construction. Based on current information/data, EPA believes that it may not be possible to mitigate for the loss of a 7.2 mile long floodplain corridor and its attendant functions and values.

E. Project History

On December 15, 1976, the final EIS on Lake Alma construction was published. EPA rated the project unsatisfactory based on its significant environmental impacts on wetlands and water quality, and referred the project to the Council on Environmental Quality (CEQ). On June 10, 1977, the Chairman of CEQ in letters to the applicant, City of Alma/Bacon County, and to the Department of Housing and Urban Development (HUD) concurred with EPA's position that the project would result in serious environmental degradation. CEQ recommended to HUD that project funds should be reprogrammed to more environmentally acceptable projects.

On January 16, 1978, EPA Regional Administrator John White recommended that the Corps of Engineers deny a Section 404 permit for the lake project based on its nonconformance with 404(b)(1) guidelines, EPA's wetland policy, Executive Order 11990, and the expected adverse water quality impacts. U.S. Fish and Wildlife Service (FWS) and Bureau of Outdoor Recreation also recommended denial of this permit.

In 1978, FWS initiated studies to determine the mitigation necessary to offset the habitat losses resulting from the project. The report concluded that 7426 acres of wooded swamp would have to be managed intensively to compensate for these losses. Since this was considered impractical, FWS prepared a mitigation plan to mitigate some of the habitat losses. Based on the applicant's acceptance of this proposed plan, the FWS withdrew its objections to permit issuance in November, 1978. On November 15, 1979, CEQ reviewed the proposed mitigation plan and found it provided inadequate compensation. It then reaffirmed its earlier determination regarding the environmental unacceptability of the Lake Alma Project.

On August 8, 1980, EPA Assistant Administrator E.C. Beck requested review of the Savannah District Engineer's favorable permit decision by the Assistant Secretary of the Army under the MOA per Section 404(q). However, on October 9, 1981, EPA Administrator Ann Gorsuch in a response to a letter from Assistant Secretary of the Army William Gianelli withdrew EPA's objections to permit issuance. Accordingly, on November 10, 1981, the Corps issued Army Permit No. 074 OYN 003752 for the construction of the dam for Lake Alma. The permit stipulated the development of mitigation based on the FWS Plan.

On December 19, 1983, the Eleventh Circuit Court of Appeals determined that a Supplemental EIS would be required to evaluate the impacts of the plan prior to the Corps 404 permit action required for construction of the greentree reservoirs. The court also enjoined lake construction pending completion of the Supplemental EIS.

In January and April 1986, EPA Region IV recommended that the Corps evaluate the impacts of the entire (Lake/mitigation plan) project in the Supplemental EIS. Region IV also stated it intent to consider the total project in the reviewing process. On April 4, 1986, Regional Administrator Jack E. Ravan

recommended denial of the Section 404 permit for the mitigation project as part of the unacceptability of the overall project. In January and November 1987, Region IV's comment letters on the Supplemental EIS reaffirmed a position opposing the project, and stated that if the Corps decided to issue the Section 404 permit then EPA would seriously consider 404(c) action.

On March 25, 1988, Regional Administrator Greer C. Tidwell met with representatives from the State of Georgia Department of Natural Resources, the Corps, and FWS to discuss EPA's objections to the project. Regional Administrator Tidwell also met with represetnatives from the City of Alma and Bacon County on May 9, 1988, to tour the project site.

After receiving the Corps May 27, 1988, letter stating the Savannah District Engineer's intent to issue a Section 404 permit for the Lake Alma mitigation, Regional Administrator Tidwell notified the Savannah District Engineer, the City of Alma, and Bacon County, on June 8 that he would initiate Section 404(c) proceedings covering the entire project site unless it was demonstrated to him within 15 days that no unacceptable adverse effects would be caused by the project. After considering a June 15, 1988 letter from the Savannah District Engineer, Colonel Ralph V. Locurcio, restating the Corps' position that construction of Lake Alma would serve the public interest, the Regional Administrator initiated the action made subject of this notice.

FOR FURTHER INFORMATION CONTACT: Frank M. Redmond, Chief, Wetland Coastal Programs Section, Water Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Greer C. Tidwell,

Regional Administrator.

[FR Doc. 88-15929 Filed 7-14-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. CL-88-130]

Common Carrier Public Mobile Services Information; Dates and Filing Requirements Announced for Acceptance of Applications for Block 5 Cellular RSAs

June 24, 1988.

During the months of August and September, 1988 applications for Block 5 cellular RSAs will be accepted for filing. Specific filing dates and markets appear on pages 5 and 6 of this notice.

All applications for these markets must be filed in Pittsburgh, Pennsylvania. Applications sent via U.S. Postal Service must be addressed as follows: Federal Communications Commission, Cellular Telephone—Market No. (ENTER MARKET NUMBER), P.O. Box 371995M, Pittsburgh, PA 15250-7995.

Applications shipped via common carrier or hand carried must be brought to the following address between the hours of 8:30 a.m. and 5:00 p.m.: Federal Communications Commission, Cellular Telephone Filing, Strip Commerce Center, 28th and Liberty Avenue, Pittsburgh, PA 15222.

Directions to the Strip Commerce Center filing location appear on page 4 of this notice.

Note.—If the number of applications filed in the previous block of RSAs is excessive, these dates may be modified. If this is necessary a new public notice will be issued.

Format of Applications

Applications must consist of: (1) A completed transmittal sheet, a copy of which is attached hereto (see also page 4); (2) a $200 fee; and (3) a sealed 5" x 7.5" envelope containing two microfiche copies of the application.

The two microfiche copies of each application shall be prepared in accordance with § 22.913(c) of the Commission's rules.

- Each fiche must be labeled at the top with the Applicant's Name, Market Number, Market Name, and Frequency Block. For Example: Jones, Robert Market # 336 California 1—Del Norte Frequency Block A
- One microfiche jacket must be labeled "Original" and the other jacket must be labeled "Copy".
- The fiche must be black & white (the purple or blue fiche are unacceptable as they do not produce readable paper copies), and the "original" microfiche copy must be archival quality.
- The information required by § 22.913(b)(2) must be placed on the 5" x 7.5" microfiche envelope. The 5" x 7.5" microfiche envelope, therefore, must be clearly labeled with the Applicant's Name, Market Number, Market Name, and Frequency Block.
- The information on the microfiche envelope must match the information on the transmittal sheet.
- The completed transmittal sheet, the $200 fee and the microfiche envelope must be placed in a 9" x 12" envelope. The market number of the market being applied for must be placed in the lower left hand corner of all envelopes delivered to the Strip Commerce Center facility.

The certification required under § 22.913(b)(3) is included on the transmittal sheet and will no longer be the first page in the application itself. The applicant chosen in each market will be required to submit its original application and two copies thereof within seven (7) days of the public notice announcing the winning applicant in each market.

Receipt Copies

Applicants wishing stamped receipts must provide an additinal copy of the transmittal sheet for each application submitted.

- Such applications that are mailed or shipped via common carrier must contain a self-addressed business-sized (approximately 4.5" x 9.5") stamped envelope along with the extra copy of the transmittal sheet. Both the extra copy and the envelope must be attached to the application inside the 9" x 12" outer envelope.
- Applications that are hand delivered must not include the receipt copy of the transmittal sheet inside the outer envelope. The receipt copy shall be presented to the acceptance clerk with the 9" x 12" envelope containing the application and will be stamped at that time.

Points to Remember

1. Each application, with associated material (transmittal sheet, check or money order, and 5" x 7.5" microfiche envelope) must be separately packaged in a 9" x 12" outer envelope.
2. A separate $200 fee must be submitted with each application.
3. A separate completed transmittal sheet is required with each application.
4. The label on the microfiche envelope must agree with the information on the transmittal sheet and the information on the top of each fiche.
5. The transmittal sheet must be signed in ink (preferably not black ink).
6. No extraneous material (such as transmittal letters) should be submitted; it will only serve to impede the processing of the application.
7. The market name and market number must match.
8. A single check or money order in the amount of $200 (made payable to the Federal Communications Commission) must be included. Cash is strongly discouraged.
9. For applications sent via the U.S. Postal Service, the market number of the market being applied for must appear at the end of the second line in the address.

10. For applications delivered by any means other than the U.S. Postal Service, the market number must appear in the lower left hand corner of the 9" x 12" outer envelope.

11. The 9" x 12" outer envelope may be placed inside a shipping envelope when applications are shipped by couriers which use special shipping envelopes.

12. DO NOT submit FAA Form 7640–1 to the Federal Aviation Administration at the time of filing this applicatio. *See Public Notice* (Report No. CL–88–33, Mimeo No. 726, released November 27, 1987).

13. The application must include a firm financial commitment, as required by section 22.917 of the Commission's Rules.

14. The reduced map, which should show the complete RSA and all CGSAs therein, amy be on a scale of 1:500,000. This map must be included in the microfiche copies of the application.

Directions to Strip Commerce Center

From Greater Pittsburgh International Airport and Interstate 79

Proceed east on Parkway (Interstate 279) towards downtown Pittsburgh.

Go through the Fort Pitt tunnels and across the Fort Pitt bridge to Liberty Avenue.

Take Liberty Avenue to 28th Street (28 blocks).

Turn right on 28th Street and follow FCC signs to parking lot.

Enter building at designated area and follow signs.

From Pennsylvania Turnpike

Take Exit 6 (Monroeville) to Parkway (Interstate 376). Go west on Parkway to the Grant Street Exit (Exit 3).

Proceed on Grant Street to Liberty Avenue (Approximately 6–7 blocks).

Bear right on to Liberty Avenue.

Take Liberty Avenue to 28th Street.

Turn right on 28th Street and follow FCC signs to parking lot.

Enter building at designated area and follow signs.

Transmittal Sheet

Attached is a copy of the transmittal sheet which must be filed with each cellular application. You may make copies of the attached form for your use. In accordance with Report No. CL–88–119 (released June 2, 1988) copies of the transmittal sheet should be two-sided, containing all the information found on the original. Only a limited number of transmittal sheets will be available to the public through the forms room located at 1919 M Street, NW in room B–10.

Notice

A copy of this Public Notice (excluding the transmittal sheet) will be placed in the **Federal Register.**

Acceptance of Applications for Cellular RSAs in Block 5

August 31—September 2

South Dakota

634. South Dakota 1—Harding
635. South Dakota 2—Corson
636. South Dakota 3—McPherson
637. South Dakota 4—Marshall
638. South Dakota 5—Custer
639. South Dakota 6—Haakon
640. South Dakota 7—Sully
641. South Dakota 8—Kingsbury
642. South Dakota 9—Hanson

Wisconsin

708. Wisconsin 1—Burnett
709. Wisconsin 2—Bayfield
710. Wisconsin 3—Vilas
711. Wisconsin 4—Marinette
712. Wisconsin 5—Pierece
713. Wisconsin 6—Trempealeau
714. Wisconsin 7—Wood
715. Wisconsin 8—Vernon
716. Wisconsin 9—Columbia
717. Wisconsin 10—Door

September 7–9, 1988

Iowa

412. Iowa 1—Mills
413. Iowa 2—Union
414. Iowa 3—Monroe
415. Iowa 4—Muscatine
416. Iowa 5—Jackson
417. Iowa 6—Iowa
418. Iowa 7—Audubon
419. Iowa 8—Monona
420. Iowa 9—Ida
421. Iowa 10—Humboldt
422. Iowa 11—Hardin
423. Iowa 12—Winneshiek
424. Iowa 13—Mitchell
425. Iowa 14—Kossuth
426. Iowa 15—Dickinson
427. Iowa 16—Lyon

North Dakota

580. North Dakota 1—Divide
581. North Dakota 2—Bottineau
582. North Dakota 3—Barnes
583. North Dakota 4—McKenzie
584. North Dakota 5—Kidder

September 14–16, 1988

Minnesota

482. Minnesota 1—Kittson
483. Minnesota 2—Lake of the Woods
484. Minnesota 3—Koochiching
485. Minnesota 4—Lake
486. Minnesota 5—Wilkin
487. Minnesota 6—Hubbard
488. Minnesota 7—Chippewa
489. Minnesota 8—Lac qui Parle
490. Minnesota 9—Pipestone
491. Minnesota 10—Le Sueur
492. Minnesota 11—Goodhue

Nebraska

533. Nebraska 1—Sioux
534. Nebraska 2—Cherry
535. Nebraska 3—Knox
536. Nebraska 4—Grant
537. Nebraska 5—Boone
538. Nebraska 6—Keith
539. Nebraska 7—Hall
540. Nebraska 8—Chase
541. Nebraska 9—Adams
542. Nebraska 10—Cass

September 21–23, 1988

Illinois

394. Illinois 1—Jo Daviess
395. Illinois 2—Bureau
396. Illinois 3—Mercer
397. Illinois 4—Adams
398. Illinois 5—Mason
399. Illinois 6—Montgomery
400. Illinois 7—Vermilion
401. Illinois 8—Washington
402. Illinois 9—Clay

Indiana

403. Indiana 1—Newton
404. Indiana 2—Kosciusko
405. Indiana 3—Huntington
406. Indiana 4—Miami
407. Indiana 5—Warren
408. Indiana 6—Randolph
409. Indiana 7—Owen
410. Indiana 8—Brown
411. Indiana 9—Decatur

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–15974 Filed 7–14–88; 8:45 am]

BILLING CODE 6712–01–M

[Report No. W–44]

Window Notice for the Filing of FM Broadcast Applications

Release: July 8, 1988.

Notice is hereby given that applications for vacant FM broadcast allotment listed below may be submitted for filing during the period beginning July 8, 1988 and ending August 16, 1988 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.[1]

[1] There exist the potential for interference between this allotment and a recently authorized station on Channel 247C in the British Virgin Islands. The United States is not a party to any bilateral agreement with Great Britain concerning FM Broadcast stations in the British Virgin Islands. However, Channel 247A at Rio Grande may be subject to deletion or replacement.

Channel—247A

Homewood.....AL
Globe.....AZ
Litchfield.....CT
Chiefland.....FL
Salyersville.....KY
Orange.....MA
Essexville.....MI
Natchez.....MS
Lebanon.....OH
Oak Harbor.....OH
Spangler.....PA
Rio Grande [1].....PR
Parsons.....TN

Channel—247C2

Longview.....TX

Channel—247C

Pecos.....TX

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–15975 Filed 7–14–88; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1737]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

July 8, 1988.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202–857–3800). Oppositions to these petitions must be filed on or before August 1, 1988.

See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Parts 1, 63 and 76 of the Commission's Rules to Implement the Provisions of the Cable Communications Policy Act of 1934. (MM Docket No. 84–1296) Number of petitions received: 1

Subject: Amendment of the Commission's Rules for Rural Cellular Services. (CC Docket No. 85–388) Number of petitions received: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Roland and Heavener, Oklahoma) (MM Docket No. 87–393, RM's–5966 & 6170) Number of petitions received: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Surfside Beach, South Carolina) (MM Docket No. 87–434, RM–6021) Number of petitions received: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Garden City, Indiana) (MM Docket No. 87–298, RM–5754) Number of petitions received: 1

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–15976 Filed 7–14–88; 8:45am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 207–011195–001.

Title: Hyundai Australia Direct Line.

Parties:

PAD Line Overseas S.A. d/b/a/ Pacific Australia Direct Line,

Hyundai Merchant Marine Co., Ltd.

Synopsis: The proposed amendment would expand the scope of the agreement to include ports on the West Coast of the United States and ports on the West Coast of Canada.

Agreement No.: 207–011202.

Title: Japan Line, Ltd. Yamashita-Shinnihon Steamship Co., Ltd. Joint Service/Consortium Agreement ("the Service").

Parties:

Japan Line, Ltd.,

Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed agreement would permit the parties to discuss, plan, establish and operate the Service to be called "Nippon Liner System, Ltd." The parties will discontinue their separate liner service in the agreement trade. The parties have requested a shortened review period.

Agreement No.: 217–011203.

Title: Wallenius-NOSAC Space Charter and Cooperative Working Agreement.

Parties:

Wallenius Lines,

Norwegian Specialized Autocarriers-NOSAC.

Synopsis: The proposed agreement would authorize the parties to agree on the chartering of space or sub-chartering of space to Wallenius Lines on vehicle carrier vessels owned or chartered by NOSAC in the trades between United Kingdom/Eire and Atlantic (including Baltic and North Sea) ports of Europe including shipments from, to or between inland or coastal points via ports.

By Order of the Federal Maritime Commission.

Dated: July 12, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–15931 Filed 7–14–88; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on July 1, 1988.

Office of Human Development Services

(Call Reports Clearance Officer on 202–472–4415) for copies of package)

1. Instructions for Grant Applications for Head Start—0980–0016—These instructions will provide Head Start Program staff with a clear and more detailed description of grantee program design, activities and cost data in order to improve services provided to children and families. Number of Respondents: 1,950; Frequency of Response: 1; Estimated Annual Burden: 11,700 hours.

Family Support Administration

(Call Reports Clearance Officer on 202–245–0652 for copies of packages)

Office of Community Services

1. Requirement for application and annual report, Emergency Community Services Homeless Grant Program—NEW—As required by Pub. L. 100–77, pending regulations require an application from States for homeless assistance grants. Also required are annual reports from grantees which provides information for a mandatory HHS annual report to Congress. Respondents: State or Local Governments. Number of Respondents: 132; Frequency of Response: 1 or 2; Estimated Annual Burden: 8,784 hours.

Office of the Secretary

(Call Reports Clearance Officer on 202–245–6511 for copies of package)

Office of The Inspector General

1. Social Security Client Satisfaction Survey—Fiscal Year 1989—0990–0171—This request for information on client satisfaction with Social Security services is needed to determine the effect of staff reductions and productivity and management improvement initiatives on clients. The improvements will be used to identify areas where improvements in service delivery are necessary to maintain SSA's high level of service to the public. Number of Respondents: 4800; Frequenty of Response: single time; Estimated Annual Burden: 2,000 hours.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202–245–2100
HCFA: 301–594–1238
FSA: 202–245–0652
SSA: 301–965–4149
OS: 202–245–6511
OHDS: 202–472–4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

ATTN: Shannah Koss-McCallum.

Date: July 7, 1988.

James V. Oberthaler,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 88–15977 Filed 7–14–88; 8:45 am]

BILLING CODE 4150–04–M

[Program Announcement No. OCS–OEA–88–1]

Family Support Administration; Office of Community Services

Availability of Funds and Requests for Applications Under the Office of Community Services, Office of Energy Assistance, Technical Assistance and Training Discretionary Authority.

AGENCY: Office of Energy Assistance, Office of Community Services, Family Support Administration, Department of Health and Human Services.

ACTION: Announcement of the availability of funds and request for applications under the Office of Energy Assistance's Technical Assistance and Training Discretionary Authority.

SUMMARY: The Office of Energy Assistance (OEA) announces that applications will be accepted for new grants pursuant to the Secretary's discretionary authority under Section 2609A of the Low Income Home Energy Assistance Act (the Act) of 1981 (title XXVI of Pub. L. 97–35, the Omnibus Budget Reconciliation Act of 1981, 42 U.S.C. 8621) as amended by Title VI of the Human Services Reauthorization Act of 1984 (Pub. L. 98–558) and Title V of the Human Services Reauthorization Act of 1986 (Pub. L. 99–425).

This program announcement consists of three parts. Part I describes the Technical Assistance and Training Program initiative and indicates who is eligible to apply, the types of projects that will be considered for funding and the duration of awards; Part II outlines application requirements; Part III describes the review, selection and award process.

DATE: The closing date for receipt of applications submitted under this Program Announcement is 30 days after publication. An application will be considered to be received on time under either of the following two circumstances:

a. The application was sent via the U.S. Postal Service or by private commercial carrier and postmarked or dated by carrier no later than midnight of the closing date unless it arrives too late to be considered by the reviewers. (Applicants are responsible for assuring that the U.S. Postal Service or private commercial carrier dates the application package. Applicants should be aware that not all post offices or private commercial carriers provide a dated postmark unless specially instructed to do so.)

b. The application is hand delivered on or before the closing date to the Office of Grants Management, Family Support Administration (FSA), at the address indicated below. Hand delivered applications will be accepted during the normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, (excluding Federal legal holidays) up through the closing date. In establishing the date of receipt of hand-delivered applications, reliance will be placed on documentary evidence of receipt maintained by FSA.

Late applications will be returned to the senders without consideration. Applications once submitted are considered final and no additional materials will be accepted by OEA. An application with an original signature and two copies is required. All applications will be assigned an identification number which will be noted on the FSA/Office of Grants Management acknowledgement card that will be sent after receipt of the application package. This number must be referred to in all subsequent communication with OEA concerning the application.

Applicants who have not received an identification number within three (3) weeks after the deadline date should notify Pera Daniels, FSA, Office of Financial Management (OFM), by telephone at (202) 245–0937.

Applications should be mailed or hand delivered to: Family Support Administration, Office of Grants Management, 370 L'Enfant Promenade, SW., Washington, DC 20407 Attn: OCS–OEA–88–1.

FOR FURTHER INFORMATION CONTACT: Susan Peters Telephone: (202) 245–1303 or 252–5319, Family Support Administration, Office of Community Services Office of Energy Assistance, 370 L'Enfant Promenade, SW., Washington, DC 20407.

Part I. General Information

A. Purpose of the Technical Assistance and Training Discretionary Program

Section 2609A(a) of the Act authorizes the Secretary of the Department of Health and Human Services to set aside up to $500,000 each fiscal year to "make grants to State and public agencies and private nonprofit organizations; or to enter into contracts or jointly financed cooperative arrangements with States and public agencies and private nonprofit organizations, to provide training and technical assistance related to the purposes of this subtitle, including collection and dissemination of information about programs and projects assisted under this subtitle, and ongoing matters of regional or national significance that the Secretary finds

would assist in the more effective provision of services under this title."

Allowable activities not specifically mentioned include demonstration projects, clearinghouse activities, and regional and national round tables to promote the sharing of innovative techniques and program models.

B. Applications

OEA is soliciting applications for the following technical assistance and training activities (activities listed are in no particular order of priority):

1. National round tables to promote the sharing of innovative techniques and program models. Round table topics should be of national significance and interest (i.e., reducing recipient dependency, reducing arrearages by coordinating energy assistance, or the case management approach to service delivery).

2. Regional round tables to promote the sharing of information concerning topics of regional significance.

3. Clearinghouse activities related to the collection and dissemination of information relating to the Low Income Home Energy Assistance Program (LIHEAP).

4. Demonstration projects of the following activities/topics related to providing LIHEAP assistance:

- Percentage of Income Payment Plans;
- Innovative Approaches to Reducing Administrative Costs;
- Guaranteed Service Plans.

An application may contain only one project and this project must be identified as responding to one of the project areas stated in this announcement. Applications which are not in compliance with this requirement will be ineligible for funding.

There is no limit to the number of applications that can be submitted under a specific project area as long as each application contains a proposal for a different project.

C. Eligible Applicants

Eligible applicants are States, Indian Tribes, Territories, public agencies and private nonprofit organizations. In addition, section 2609(b) states that "No provision of this section shall be construed to prevent the Secretary from making a grant pursuant to subsection (a) to one or more private nonprofit organizations that apply jointly with a business concern to receive such grant."

D. Availability of Funds

The Office of Energy Assistance (OEA) of the Family Support Administration (FSA) expects to award approximately 3–5 grants. No single grant will exceed $200,000 in Federal funds, and no more than one grant will be made to any eligible applicant.

E. Duration of Awards

FSA/OEA expects that most of the funds for these grants will be for an 18–24 month period. Regardless of the time requested in an application, it must be clearly demonstrated that the project work plan will achieve measurable results and can be successfully completed within the funding period requested.

F. General Terms

Grantees are subject to the provisions of Office of Management and Budget Circular A–100 or Government-wide Grants Administration Rules for State and Local Governments, published March 11, 1988, A–122, A–87 and to the provisions of 45 CFR Parts 16, 74, 75, 76, 80, 81, 83, 84, 86, 90, and 91. These are not the only requirements, and grantees will be specifically informed of other grant conditions on receipt of an award. Grantees will be required to submit quarterly financial reports, quarterly narrative reports, a final narrative report, and a final audit for any project that receives OEA funds. Where applicable, grantees are subject to the provisions of the Single Act (Pub. L. 98–502) and OMB Circular A–128. Proportional costs associated with fulfillment of the audit requirement may be charged to the grant.

G. Definitions

For the purpose of this program announcement, the following definitions apply:

"State" means each of the several States and the District of Columbia.

"Indian tribe" means any tribe, band, or other organized group of Indians recognized in the State in which it resides or considered by the Secretary of the Interior to be an Indian tribe or an Indian organization for any purpose.

"Territory" refers to the Commonwealth of Puerto Rico, the American Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, Micronesia, the Marshall Islands and Palau.

Except where specifically noted, where the word "State" appears in this program announcement, it also means "Indian Tribe" or "Territory".

A "Low-income LIHEAP household" is a household with income at or below 150 percent of the Department of Health and Human Services (DHHS) poverty level for such State or an amount equal to 60 percent of the State median income. Attachment A to this announcement is an excerpt from the most recently published poverty guidelines. Annual revisions of these guidelines are normally published in February or early March of each year and are applicable to projects implemented at the time of publication. (These revised guidelines may be obtained through the U.S. Government Printing Office at the following address: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 2040 or through the Office of Energy Assistance).

No other government agency or privately defined poverty guidelines are applicable for the determination of low income eligibility for the LIHEAP.

A "provider of LIHEAP services/programs" refers to those States, Indian Tribes, Territories, and Local Administrating Agencies that administer a Federally funded Low Income Home Energy Assistance Program. Local administrating agencies include any local public or private nonprofit agency designated by a State, Territory or Indian Tribe to carry out the purposes of the LIHEAP.

H. Population To Be Served

Projects proposed for funding under this announcement must benefit those providers of LIHEAP services/programs, and/or provide long term benefits to low-income LIHEAP households.

I. Indian Tribes

In recognition of the special needs of Indian Tribes and Tribal LIHEAP grantees, priority consideration will be given to proposals which assist and address these populations.

Part II. Application Requirements

A. Availability of Forms

Applications for awards under this program must be submitted on the Standard Form (SF) 424. Attachment B to this announcement contain all forms and instructions required for submittal of applications. The forms may be reproduced for use in submitting applications. Additional copies of the announcement may be obtained by writing or telephoning: Susan Peters, Department of Health and Human Services, Family Support Administration, Office of Community Services, Office of Energy Assistance, 330 C Street SW.—Room 2054, Switzer Building, Washington, DC 20201, RE:OCS–OEA–88–1, telephone: (202) 245–1303.

B. Application Package

1. Each application package must include an original and four copies of

the application. The original copy must contain the original signature on the Standard Form 424 of an official of the eligible entity having legal authority to obligate the applicant. Applications must be uniform in composition. They must be submitted on 8½ by 11 inch paper and the text of the application cannot exceed ten (10) single-spaced pages. This excludes the cover page, Table of Contents, Standard Form 424 and its attachments and assurances, as well as any appendices to the application. Do not include extraneous materials, such as promotional brochures, slides, tapes, film clips, etc. They will be discarded.

2. Applications submitted in binders must allow for easy separation and reassembly.

C. Application Content

All applications must include a cover page followed by a Table of Contents with page numbers for each section, subsection, and attachment(s). Each page of the application, including any attachment(s), must be numbered consecutively. The Table of Contents should list the following items and the application should present the material in the following order:

1. Standard Form 424, Parts I–V; if applicable, include in Part I, justification for requesting a grant period of more than or less than 12 months.

The first page of the SF–424 must contain *in the lower right hand corner* a designation indicating under which project area funds are being requested. The following project area designations must be used:

RRT—Regional Round Table
NRT—National Round Table
DIP—Demonstration Project, Percentage of Income Plans
DPG—Demonstration Project, Guaranteed Service Plans
DPA—Demonstration Project, Reducing Administrative Costs
CHA—Clearinghouse Activities

For each item below, the applicant should provide a thorough but succinct statement and related documentation, as required.

2. Executive Summary:

(a) Description of the project activities.

(b) Intent/purpose of the project.

(c) Certification that, if the proposed project is an extension of an existing project or activity, the applicant is supplementing, not supplanting, existing funds.

(d) Description of the target population.

(e) Description as to the impact or value of the proposed project on the target population.

3. Project Narrative:

(a) Description of the project goals and objectives.

(b) Description of the project activities related to the goals and objectives. (Include target dates in the chronological order by which the key activities will occur in order to accomplish the goals and objectives of the project).

(c) Documentation to substantiate how, based on prior experience, the project can be successfully accomplished within the proposed funding period requested.

(d) Description of the methods to be used to disseminate the information resulting from the project to LIHEAP grantees and the other interested parties.

(e) Describe a plan for a written self-assessment or 3rd party evaluation of the project that will objectively evaluate the extent to which the project produced the intended goals and objectives.

4. Significant and Beneficial Impact:

(a) Description of how the project will result in long term improvements in the LIHEAP.

(b) Description of how the project will result in long term benefits to low-income participants and beneficiaries eligible under the LIHEAP.

5. Ability of Applicant to Perform:

(a) Description of applicant's organizational structure, mission, strategy. (If this application involves a partnership(s) arrangement, also provide the aforementioned information for each of the partners.)

(b) Demonstrate and document accomplishments relevant to the proposed project.

(c) Describe history of experience relevant to the LIHEAP.

6. Staffing and Resources:

(a) Description of proposed key staff experiences or job descriptions relevant to the project.

(b) Identification of the Chief Executive Officer, and the proposed project manager.

(c) Description of the assigned responsibilities of staff to the tasks identified for the project.

7. Narrative Justification of the Budget Request:

(a) Describe how the resources requested are reasonable and adequate to accomplish the project.

(b) Demonstrate that the total cost is reasonable and consistent with the anticipated results.

(c) Provide line item budget and justification.

Those applications focusing on regional round tables to promote the sharing of information of regional significance must also provide the following:

8. Regional Round Tables:

(a) Documentation of Regional Interest (i.e., letters indicating regional support) to substantiate regional interest in the proposed round table.

For those applications addressing the special needs of Indian Tribes, provide the following:

9. Indian Tribes:

(a) Description of how the project will address the special needs of Indian tribes.

(b) Description of the impact and value of the project on Tribal LIHEAP grantees and/or the low-income Tribal populations.

Part III. Review, Selection and Award Process

All applications that meet the published deadline for receipt at FSA will be screened to determine completeness and conformity to the requirements of this announcement. Only complete and conforming applications will be reviewed and rated.

A. Screening Requirements

In order for an application to be processed, it must meet all of the following requirements:

1. The text of the application must not exceed ten (10) single spaced 8½ by 11 inch pages, excluding the cover page, Table of Contents, the SF–424 and its attachments and assurances, and any appendices.

2. The SF–424 form must be completed according to its instructions and Item 23b of Part I must be signed by an official having the legal authority to obligate the applicant.

3. A signed original application and four copies must be submitted.

4. Only those entities specified under Section 2609A of the Low Income Home Energy Assistance Act of 1981 (title XXVI of Pub. L. 97–35, the Omnibus Budget Reconciliation Act of 1981, 42 U.S.C. 8621) as amended by Title VI of the Human Services Reauthorization Act of 1984 (Pub. L. 98–558) and Title V of the Human Services Reauthorization Act of 1986 (Pub. L. 99–425) are eligible to apply.

5. The application contains only one project and this project is identified as responding to one of the project areas stated in this announcement.

Failure to comply with these requirements may result in the disqualification and return of an application.

B. Pre-rating Review

Applications which pass the initial screening will be reviewed by the program office to verify that they comply with this program announcement in the following areas:

1. The project proposal must focus on no more than one of the following program activities authorized under the Technical Assistance and Training Discretionary Program; demonstration projects relating to the LIHEAP; national round tables; regional round tables; clearinghouse activities.

2. If the proposed project is an extension or expansion of an existing project or activity, the applicant must certify that they are supplementing, not supplanting, existing funds for the project.

3. The applicant must target the specific outcomes and benefits of the project to low-income LIHEAP households and/or to the providers of LIHEAP services/programs.

4. The applicant must describe the impact or value of the proposed project on the target population.

Applicants must meet items 1–4 of the above requirements to be considered for funding. In addition, if the proposed project is a regional round table the applicant must also meet the requirement specified below.

5. If the proposed project is a regional round table, the applicant must include documentation of regional interest (i.e., letters indicating regional support) to substantiate regional interest in the proposed round table.

C. Rating Criteria

Applications which pass initial screening and pre-rating review will be rated on a competitive basis by a panel of independent reviewers.

Each reader will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in this announcement. An overall rating will include the reviewer's judgement of each application. This review and rating process will use the following criteria.

1. Adequacy of Work Program (maximum: 30 points)

(a) The project goals and objectives are appropriately described and are specific. (0–5 points)

(b) Activities are adequately described and appropriately related to the goals and objectives. (0–5 points)

(c) The applicant proposes realistic time frames, and identifies the key activities in chronological order that are necessary to accomplish the goals and objectives of the project. (0–5 points)

(d) The applicant adequately documents, based on prior experience, that the project can be successfully accomplished within the proposed funding period requested. (0–5 points)

(e) The application includes a realistic plan for disseminating the information resulting from the project to LIHEAP grantees and other interested parties. (0–5 points)

(f) The application includes an adequate plan for conducting a self-assessment or 3rd party evaluation of the project that will assess the degree to which the stated goals and objectives of the project are achieved. (0–5 points)

2. Significant and Beneficial Impact (maximum: 15 points)

(a) Applicant adequately describes how the project will deliver long term improvements in the LIHEAP. (0–7 points)

(b) Applicant adequately describes how the project will result in significant long term benefits to low-income participants and beneficiaries eligible under the LIHEAP. (0–8 points)

3. Ability of Applicant to Perform (maximum: 15 points)

(a) The applicant has the administrative and programmatic capability to perform the project. (0–5 points)

(b) The application demonstrates and documents experience and competence relevant to the proposed project. (0–5 points)

(c) The application demonstrates that the applicant has experience relevant to the LIHEAP. (0–5 points)

4. Staffing and Resources (maximum: 15 points)

(a) The applicant's proposed key staff are well qualified and their professional experiences are relevant to the successful implementation of this project. (0–8 points)

(b) The applicant's description of how the assigned responsibilities of staff are appropriate to the tasks identified for this project is clear and logical and shows that sufficient time of senior staff will be budgeted to assure timely implementation and cost effective management of the project. (0–7 points)

5. Budget (maximum: 15 points)

(a) The application demonstrates that the resources requested for the project are reasonable and adequate to accomplish the project. (0–7 points)

(b) The total cost is reasonable and consistent with anticipated results. (0–8 points)

For those applications addressing the special needs of Indian Tribes:

6. Indian Tribes (maximum: 10 points)

(a) Applicant adequately describes how the project will address the special needs of Indian tribes. (0–5 points)

(b) Applicant adequately describes the impact and value of the project on Tribal LIHEAP grantees and/or the low-income Tribal populations. (0–5 points)

D. Selection and Award Process

1. The results of the rating process will be used to assist the Director and OEA staff in considering competing applications. Rating scores will weigh heavily in funding decisions but will not be the only factors considered, and highly ranked applications are not guaranteed funding.

2. The Director may also consider other factors, including, but not limited to, comments of rating panels and public officials; program staff quality review; geographic distribution of projects; prior program performance of applicants; audit and investigative reports; and applicant's progress in resolving any final audit disallowances on OEA or other Federal grants.

3. The Office of Energy Assistance reserved the option to discuss these applications with other funding sources to determine an applicant's performance record.

4. The official award document is the Notice of Grant Award, which sets forth in writing to the recipient the amount of funds awarded, the purpose of the award, other terms and conditions of the award, the effective date of the award, the budget period for which support is given, and the total project period for which support is approved.

Mary M. Evert,

Director, Office of Community Services.

Dated: July 6, 1988.

Attachment A—Annual Revision of Poverty Income Guidelines.

Attachment B—SF–424, Federal Assistance.

Attachment A.—1987

110% AND 150% OF POVERTY INCOME GUIDELINES FOR ALL STATES EXCEPT ALASKA AND HAWAII

Size of family unit	110%	150%
1	$6,050	$8,250
2	8,140	11,100
3	10,230	13,950
4	12,320	16,800
5	14,410	19,650
6	16,500	22,500
7	18,590	25,350
8	20,680	28,200

For household units with more than 8 members: add $2,090 for each additional household member at 110% of poverty;

add $2,850 for each additional member at 150% of poverty.

110% AND 150% OF POVERTY INCOME GUIDELINES FOR ALASKA

Size of family unit	110%	150%
1	$7,546	$10,290
2	10,164	13,860
3	12,782	17,430
4	15,400	21,000
5	18,018	24,570
6	20,636	28,140
7	23,254	31,710

110% AND 150% OF POVERTY INCOME GUIDELINES FOR ALASKA—Continued

Size of family unit	110%	150%
8	25,872	35,280

For household units with more than 8 members: add $2,618 for each additional household member at 110% of poverty; add $3,570 for each additional member at 150% of poverty.

110% AND 150% OF POVERTY INCOME GUIDELINES FOR HAWAII

Size of family unit	110%	150%
1	$6,941	$9,465
2	9,350	12,750
3	11,759	16,035
4	14,168	19,320
5	16,577	22,605
6	18,986	25,890
7	21,395	29,175
8	23,804	32,460

60% OF STATE MEDIAN INCOME FISCAL YEAR 1988

State	60% of State median income, by household size					
	1	2	3	4	5	6
Alabama	$8,863	$11,590	$14,317	$17,044	$19,771	$22,498
Alaska	13,384	17,502	21,620	25,738	29,856	33,974
Arizona	10,024	13,109	16,193	19,277	22,362	25,446
Arkansas	8,192	10,712	13,233	15,753	18,273	20,794
California	11,302	14,779	18,256	21,734	25,211	28,689
Colorado	10,987	14,367	17,748	21,128	24,509	27,889
Connecticut	12,691	16,596	20,501	24,406	28,311	32,216
Delaware	10,640	13,914	17,188	20,462	23,736	27,010
District of Columbia	10,174	13,305	16,435	19,566	22,697	25,827
Florida	9,786	12,797	15,807	18,818	21,829	24,840
Georgia	9,955	13,018	16,081	19,144	22,207	25,270
Hawaii	10,806	14,131	17,457	20,782	24,107	27,432
Idaho	8,543	11,172	13,801	16,430	19,059	21,687
Illinois	10,725	14,025	17,324	20,624	23,924	27,224
Indiana	9,787	12,799	15,810	18,821	21,833	24,844
Iowa	9,181	12,005	14,830	17,655	20,480	23,305
Kansas	9,708	12,695	15,681	18,668	21,655	24,642
Kentucky	8,520	11,141	13,763	16,384	19,006	21,627
Louisiana	9,332	12,203	15,075	17,946	20,817	23,689
Maine	8,904	11,643	14,383	17,122	19,862	22,601
Maryland	12,497	16,342	20,188	24,033	27,878	31,724
Massachusetts	12,193	15,944	19,696	23,447	27,199	30,951
Michigan	10,579	13,834	17,090	20,345	23,600	26,855
Minnesota	10,725	14,025	17,326	20,626	23,926	27,226
Mississippi	8,023	10,492	12,961	15,430	17,898	20,367
Missouri	9,801	12,817	15,833	18,848	21,864	24,880
Montana	8,736	11,424	14,111	16,799	19,487	22,175
Nebraska	9,564	12,507	15,450	18,393	21,336	24,279
Nevada	10,082	13,184	16,286	19,388	22,491	25,593
New Hampshire	11,139	14,566	17,994	21,421	24,849	28,276
New Jersey	12,730	16,646	20,563	24,480	28,397	32,314
New Mexico	8,464	11,068	13,672	16,276	18,880	21,485
New York	10,757	14,067	17,377	20,687	23,997	27,307
North Carolina	9,450	12,358	15,266	18,174	21,082	23,990
North Dakota	9,046	11,829	14,612	17,396	20,179	22,962
Ohio	10,445	13,659	16,873	20,087	23,301	26,515
Oklahoma	9,064	11,852	14,641	17,430	20,219	23,008
Oregon	9,591	12,542	15,493	18,445	21,396	24,347
Pennsylvania	10,067	13,164	16,262	19,359	22,456	25,554
Rhode Island	10,656	13,935	17,214	20,492	23,771	27,050
South Carolina	9,178	12,002	14,826	17,650	20,474	23,298
South Dakota	8,160	10,670	13,181	15,692	18,202	20,713
Tennessee	8,710	11,390	14,070	16,750	19,430	22,110
Texas	10,043	13,133	16,223	19,313	22,404	25,494
Utah	9,246	12,091	14,936	17,780	20,625	23,470
Vermont	9,366	12,248	15,130	18,011	20,893	23,775
Virginia	11,030	14,424	17,818	21,212	24,606	28,000
Washington	10,231	13,379	16,527	19,675	22,823	25,970
West Virginia	8,165	10,677	13,190	15,702	18,214	20,727
Wisconsin	9,986	13,059	16,132	19,204	22,277	25,350
Wyoming	9,591	12,542	15,493	18,445	21,396	24,347

For each additional household size greater than six persons, add 3% to 132% for each additional household member and multiply the new percentage by the State's dollar amount for 60% of the state median for a 4-person household.

BILLING CODE 4150-04-M

ATTACHMENT B

OMB Approval No. 0348-0006

FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION *(Mark appropriate box)*
- ☐ NOTICE OF INTENT (OPTIONAL)
- ☐ PREAPPLICATION
- ☐ APPLICATION

2. APPLICANT'S APPLICATION IDENTIFIER
- a. NUMBER
- b. DATE *Year month day* 19

3. STATE APPLICATION IDENTIFIER *NOTE TO BE ASSIGNED BY STATE*
- a. NUMBER
- b. DATE ASSIGNED *Year month day* 19

Leave Blank

SECTION I—APPLICANT/RECIPIENT DATA

4. LEGAL APPLICANT/RECIPIENT
- a. Applicant Name .
- b. Organization Unit .
- c. Street/P.O. Box .
- d. City . e. County
- f. State . g. ZIP Code.
- h. Contact Person *(Name & Telephone No.)* .

5. EMPLOYER IDENTIFICATION NUMBER (EIN)

6. PROGRAM *(From CFDA)*
- a. NUMBER | | | * | | | |
- MULTIPLE ☐
- b. TITLE

7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)

8. TYPE OF APPLICANT/RECIPIENT
A—State; B—Interstate; C—Substate Organization; D—County; E—City; F—School District; G—Special Purpose District; H—Community Action Agency; I—Higher Educational Institution; J—Indian Tribe; K—Other *(Specify):*
Enter appropriate letter ☐

9. AREA OF PROJECT IMPACT *(Names of cities, counties, states, etc.)*

10. ESTIMATED NUMBER OF PERSONS BENEFITING

11. TYPE OF ASSISTANCE
A—Basic Grant; B—Supplemental Grant; C—Loan; D—Insurance; E—Other
Enter appropriate letter(s) ☐☐

12. PROPOSED FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. Total	$	.00

13. CONGRESSIONAL DISTRICTS OF:
- a. APPLICANT
- b. PROJECT

15. PROJECT START DATE *Year month day* 19

16. PROJECT DURATION *Months*

18. DATE DUE TO FEDERAL AGENCY ► *Year month day* 19

14. TYPE OF APPLICATION
A—New; B—Renewal; C—Revision; D—Continuation; E—Augmentation
Enter appropriate letter ☐

17. TYPE OF CHANGE *(For 14c or 14e)*
A—Increase Dollars; B—Decrease Dollars; C—Increase Duration; D—Decrease Duration; E—Cancellation; F—Other *(Specify):*
Enter appropriate letter(s) ☐☐☐

19. FEDERAL AGENCY TO RECEIVE REQUEST
- a. ORGANIZATIONAL UNIT (IF APPROPRIATE)
- b. ADMINISTRATIVE CONTACT (IF KNOWN)
- c. ADDRESS

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER

21. REMARKS ADDED ☐ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT► To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.
- a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
- b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW ☐

23. CERTIFYING REPRESENTATIVE
- a. TYPED NAME AND TITLE
- b. SIGNATURE

SECTION III—FEDERAL AGENCY ACTION

24. APPLICATION RECEIVED *Year month day* 19

25. FEDERAL APPLICATION IDENTIFICATION NUMBER

26. FEDERAL GRANT IDENTIFICATION

27. ACTION TAKEN
- ☐ a. AWARDED
- ☐ b. REJECTED
- ☐ c. RETURNED FOR AMENDMENT
- ☐ d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
- ☐ e. DEFERRED
- ☐ f. WITHDRAWN

28. FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. TOTAL	$	.00

29. ACTION DATE► *Year month day* 19

30. STARTING DATE *Year month date* 19

31. CONTACT FOR ADDITIONAL INFORMATION *(Name and telephone number)*

32. ENDING DATE *Year month date* 19

33. REMARKS ADDED ☐ Yes ☐ No

SECTION IV–REMARKS *(Please reference the proper item number from Sections I, II or III, if applicable)*

OMB NO 0348-0006

PART II
PROJECT APPROVAL INFORMATION

Item 1
Does this assistance request require State, local regional, or other priority rating?
_____ Yes _____ No
Name of Governing Body _____
Priority Rating _____

Item 2.
Does this assistance request require State, or local advisory, educational or health clearances?
_____ Yes _____ No
Name of Agency or Board _____
(Attach Documentation)

Item 3
Does this assistance request require State, local, regional or other planning approval?
_____ Yes _____ No
Name of Approving Agency _____
Date _____

Item 4.
Is the proposed project covered by an approved comprehensive plan?
_____ Yes _____ No
Check one: State ☐ Local ☐ Regional ☐
Location of Plan _____

Item 5.
Will the assistance requested serve a Federal installation?
_____ Yes _____ No
Name of Federal Installation _____
Federal Population benefiting from Project _____

Item 6.
Will the assistance requested be on Federal land or installation?
_____ Yes _____ No
Name of Federal Installation _____
Location of Federal Land _____
Percent of Project _____

Item 7.
Will the assistance requested have an impact or effect on the environment
_____ Yes _____ No
See instructions for additional information to be provided.

Item 8.
Will the assistance requested cause the displacement of individuals, families, businesses, or farms?
_____ Yes _____ No
Number of:
Individuals _____
Families _____
Businesses _____
Farms _____

Item 9.
Is there other related assistance on this project previous, pending, or anticipated
_____ Yes _____ No
See instructions for additional information to be provided.

BILLING CODE 4150-04-C

INSTRUCTIONS; PART III

General Instructions

This form is designated so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grant or agencies may require Budgets to be separately shown by function or activity. For other programs, grantor agencies may not require a break-down by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line entry in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)

For new applications, leave Columns (c) and (d) blank. For each line in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns 9 (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of the amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4. Column (a), Section A. When additional sheets were prepared for Section A, provide similar column hearings on each sheet. For each program, function, or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–h—Show the estimated amount for each direct cost budget (object class) category for each column with program, function, or activity heading.

Line 6i—Show the totals of Lines 6a and 6h in each column.

Line 6j—Show the amount of indirect cost. Refer to appendix E, 45 CFR Part 74; Federal Management Circular 74–4; and Office of Management and Budget Circular Nos. A–21 and A–122.

Line 6k—Enter the total amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5. When additional sheets were prepared, the last two sentences apply only to the first page with summary totals.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Source of Non-Federal Resources

Lines 8–11—Enter the amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief statement on a separate sheet. (See subpart G, 45 CFR, Part 74).

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the amount of cash and in-kind contributions to be made by the applicant as shown in Section A. (See also subpart G, 45 CFR, Part 74).

Column (c)—Enter the State contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f) Section A.

Sections D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuing grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the

program or project over the succeeding funding periods (usually in years). This Section need not be completed for amendments, changes, or supplements to funds for the current year of existing grants.

If more than four lines are needed to list the program titles submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final and fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations required herein or any other comments deemed necessary.

SUPPLEMENTARY INSTRUCTIONS; PART III

General

Sections A thru D should provide budget estimates for 12 month periods unless program guidelines stipulate otherwise.

Research Grant Applications

Cost sharing from non-Federal funds is required on all research projects; however, the level of such cost sharing proposed by the applicant should not be shown in the application. Use the following instructions when applying for a research grant.

1. Section A—Leave columns (d) and (f) blank.
2. Section B—Enter the requirements for Federal funds only.
3. Section C—Leave blank.
4. Section D—Complete line 13 only.

HHS Form 490, Project Cost Sharing Agreement for HHS Awards must be submitted if the applicant does not have institutional cost sharing agreement with HHS.

Section A—Budget Summary

Lines 1–4

Columns (c) and (d)—For continuing grant applications only, the estimated unobligated funds should always be entered in these columns.

Section B—Budget Categories

Line 6(a) Personnnel—Show salaries and wages only. Fees and expenses for consultants should be included on Line (h) Other. The name or title, salary amounts and level of effort must be identified in the supplement to Section H (Page 15) of each position.

LIne 6(b) Fringe Benefits—Leave blank if fringe benefits applicable to direct salaries and wages are treated as part of indirect costs in the indirect cost rate negotiation agreement.

Line 6(c) Travel—Use only for travel (foreign and domestic) of employees on the grant. Travel of consultants, trainees, etc., should not go on this line, nor should local transportaion (i.e., where no out-of-town trip is involved). Any foreign travel requested must be separately identified and justified under Section F.

Line 6(d) Equipment—Use only for nonexpendable personal property, which is defined as follows:

Nonexpendable personal property means tangible personal property having a useful life of more than two years and an acquisition cost of $500 or more per unit. A grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined below:

Personal property means property of any kind except real property. It may be tangible—having physical existence or intangible—having no physical existence, such as patents, inventions, and copyrights.

Each item of nonexpendable personal property costing over $1000 and each item of General Purpose Equipment costing over $500 must be identified and explained under Section F. State and local government applicants must identify and explain each item of nonexpendable personal property costing over $500 under Section F. (General Purpose Equipment means items such as office equipment, air conditioning and furnishings which are usable for activities other than the technical, specialized aspects of the grant program).

Line 6(e) Supplies—Include all tangible personal property except that which is on line (d) Equipment. Requests in excess of $500 per category of tangible personal property (supply) must be identified and explained under Section F.

Line 6(f) Contractual—Use for (1) procurement contracts (except those which belong on other lines such as equipment, supplies and construction), (2) inpatient and outpatient care cost, and (3) contracts or other agreements with secondary recipient organizations such as affiliates, cooperating institutions, delegate agencies, political subdivisions, etc. Line (f) must not include payments to individuals such as stipends and allowances for trainees, consulting fees, benefits, etc. Requests in (1) above in excees of $2,500 and each item in (2) and (3) above must be identified and explained under Section F.

Line 6(g) Construction—Use for both new construction and for alteration and renovation. ORR programs using this application do not have construction authority but may support limited amounts of alteration or renovation. Check the program guidelines. Amounts entered for this item must be explained under Section F.

Line 6(h) Other—Use for all direct cost not clearly covered by lines (a) through (g). Examples are computer use charges, consultant cost, payments to individuals such as stipends and allowances, tuition, space or equipment rental, local transportation, assistance payments, and medical services. Requests for any item identified in Appendix E, 45 CFR, Part 74, and Office of Management and Budget Circular Nos. A–21, A–87, and A–122, which require approval by the awarding agency must be identified and explained under Section F.

BILLING CODE 4150-04-M

OMB NO. 0348-0006

PART III - BUDGET INFORMATION

SECTION A - BUDGET SUMMARY

Grant Program, Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	- Grant Program, Function or Activity				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges					
j. Indirect Charges					
k. TOTALS	$	$	$	$	$
7. Program Income	$	$	$	$	$

OMB NO 0348-0006

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) APPLICANT	(c) STATE	(d) OTHER SOURCES	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (YEARS)			
	(b) FIRST	(c) SECOND	(d) THIRD	(e) FOURTH
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach Additional Sheets if Necessary)

21. Direct Charges:

22. Indirect Charges:

23. Remarks:

PART IV PROGRAM NARRATIVE (Attach per instruction)

BILLING CODE 4150-04-C

SUPPLEMENTARY INSTRUCTIONS FOR PART III, SECTION H

1. Personal

List all personnel chargeable as a direct cost to this program by title, salary and percentage of effort. Include names for key positions only.

Enter in Column 1 the annual (12 months) salary rate for each position which will be filled for all or any part of the year by an incumbent working on the project. This rate may not be more than that paid by the grantee to other employees in comparable positions or, if the grantee has no comparable positions, the rate may not be more than that paid for such services elsewhere in the community.

Enter in Column 2 the number of months the position will be filled by an incumbent working on the project.

Enter in Column 3 the percent of time or effort the incumbent will devote to the project during the number of months show in Column 2.

Enter in Column 4 the total amount required, as computed from the information shown in Columns 1 thru 3. Use the following formula:

Annual Salary (Col. 1) × No. of Months (Col. 2) ÷ 12 × Percent of Effort (Col. 3) = Total Amount Required (Col. 4)

Examples	(1)	(2)	(3)	(4)
Name	Annual salary rate	No. mos. budg.	% Time	Total amount required
John Doe, Project Director [1]	24,000	12 12	100	24,000
Jane Smith, Asst. Dir. [1]	18,500	10 12	100	15,417
Senior Counselor [2]	19,750	12 12	60	11,850
Secretary [2]	11,500	9 12	75	6,469
Fringe Benefits; Rate: [1] — 21%				8,278
[2] — 15%				2,748
Category Total				68,762

2. Fringe Benefits

Enter in the parenthesis the fringe benefit rate applicable to employees of the institutions. In Column 4, enter the amount determined by applying the rate to the total of the salaries in Column 4 to which the rate applies.

3. Option for Salary Detail Submission

Institutions may request that the salary rates and amounts requested for individuals not be made available to HHS reviewing consultants. To do so, an additional copy of this page must also be submitted, complete in all respects, except that Columns 1 and 4 may be left blank.

BILLING CODE 4150-04-M

SUPPLEMENT TO PART III, SECTION H
PERSONNEL

Name and Position Title	Annual Salary Rate	No. Mos. Budg.	% Time	Total Amount Required
	(1)	(2)	(3)	(4)
Fringe Benefits (Rate_____)				
			CATEGORY TOTAL	$

BILLING CODE 4150-04-C

INSTRUCTIONS; PART IV; PROGRAM NARRATIVE

Prepare the program narrative statement in accordance with the following instructions for all new grant programs. Requests for continuation or refunding and changes on an approved project should respond to item 5b only. Requests for supplemental assistance should respond to question 5c only.

1. Objectives and Need for This Assistance

Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Any relevant data based on planning studies should be included or footnoted.

2. Results or Benefits Expected

Identify results and benefits to be derived. For example, when applying for a grant to establish a neighborhood health center provide a description of who will occupy the facility, how the facility will be used, and how the facility will benefit the general public.

3. Approach

a. Outline a plan of action pertaining to the scope and detail of how the proposed work will be accomplished for each grant program, function or activity, provided in the budget. Cite factors which might accelerate or decelerate the work and your reason for taking this approach as opposed to others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

b. Provide for each grant program, function, or activity, quantitative monthly or quarterly projections of the accomplishments to be achieved in such terms as the number of jobs created; the number of people served; and the number of patients treated. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

c. Identify the kinds of data to be collected and maintained and discuss the criteria to be used to evaluate the results and successes of the project. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified in item 2 are being achieved.

d. List organizations, cooperators, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

4. Geographic Location

Give a precise location of the project or area to be served by the proposed project. Maps or other graphic aids may be attached.

5. If Applicable, Provide the Following Information

a. For research or demonstration assistance requests, present a biographical sketch of the program director with the following information: name, address, phone number, background, and other qualifying experience for the project. Also, list the name, training and background for other key personnel engaged in the project.

b. Discuss accomplishments to date and list in chronological order a schedule of accomplishments, progress, or milestones anticipated with the new funding request. If there have been significant changes in the project objectives, location, approach, or time delays, explain and justify. For other requests for changes or amendments, explain the reason for the change(s). If the scope or objectives have changed or an extension of time is necessary, explain the circumstances and justify. If the total budget has been exceeded, or if individual budget items have changed more than the prescribed limits contained in Attachment K to FMC 74-7, explain and justify the change and its effect on the project.

c. For supplemental assistance requests, explain the reason for the request and justify the need for additional funding.

Exhibit M-3. Application for Federal Assistance (Nonconstruction Programs)

PART V; ASSURANCES

The Applicant hereby assures and certifies that it will comply with the regulations, policies, guidelines and requirements, including 45 CFR Part 74 and OMB Circulars No. A-102, A-110 and applicable cost principles, (Circulars: A-21, "Educational Institutions"; A-87, "Cost Principles for State and Local Governments"; and A-122, "Nonprofit Organizations"), as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. Also the applicant assures and certifies with respect to the grant that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

2. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.

3. It will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminating employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.

4. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally-assisted programs.

5. It will comply with the provisions of the Hatch Act which limit the political activity of State and local government employees.

6. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act (29 U.S.C. 201) as they apply to employees of institutions of higher education, hospitals, other nonprofit organizations, and to employees of State and local governments who are not employed in integral operations in areas of traditional governmental functions.

Head Start, Certification of Minimum Wage: It certifies that it has reviewed the salary structures and wages for all positions and certifies that persons employed in carrying out this program shall not receive compensation at a rate which is (a) in excess of the average rate of compensation paid in the area to persons providing substantially comparable services; or (b) less than the minimum wage rate prescribed in section 6(a) of the Fair Labor Standards Act of 1938. Documentation of the methods by which it established wage scales is available in their files for review by audit and HDS personnel.

7. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

8. It will give the sponsoring agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant, including the records of contractors and subcontractors performing under the grant.

9. It will comply with requirements imposed by the Federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.

10. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

11. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93–234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

12. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a–1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the grantee's activity and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

13. Applicants for the Administration for Native Americans Programs, hereby certify in accordance with 45 CFR 1336.53, that the financial assistance provided by the Office of Human Development Services for the specified activities to be performed under this program, will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

14. It will comply with the Age Discrimination Act of 1975 enacted as an amendment to the Older Americans Act (Pub. L. 94–135), which provides that: No person in the United States shall, on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity for which the applicant receives Federal financial assistance.

15. It will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto, which prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance.

16. It will comply with Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.) which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance (whether or not the programs or activities are offered or sponsored by an educational institution).

17. It will comply with Pub. L. 93–348 as implemented by Part 46 of Title 45 (45 CFR 46, 42 U.S.C. 2891) regarding the protection of human subjects involved in research, development, and related activities supported by the grant.

18. It will comply with the equal opportunity clause prescribed by Executive Order 11246, as amended, and will require that its subrecipients include the clause in all construction contracts and subcontracts which have or are expected to have an aggregate value within a 12-month period exceeding $10,000, in accordance with Department of labor regulations at 41 CFR Part 60.

19. It will include, and will require that its subrecipients include, the provision set forth in 29 CFR 5.5(c) pertaining to overtime and unpaid wages in any nonexempt nonconstruction contract which involves the employment of mechanics and laborers (including watchmen, guards, apprentices, and trainees) if the contract exceeds $2,500.

[FR Doc. 88–15471 Filed 7–14–88; 8:45 am]
BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 83C–0129]

Color Additives; Denial of Petition for Listing of D&C Red No. 19 for Use in Externally Applied Drugs and Cosmetics

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is denying the color additive petition to permanently list D&C Red No. 19 for use in externally applied drugs and cosmetics. This action is based upon previous findings of FDA that this color additive is carcinogenic in test animals and the finding of the U.S. Court of Appeals for the District of Columbia that D&C Red No. 19, which had been found to be a carcinogen in animals, cannot be listed as a color additive in externally applied drugs and cosmetics on the basis of a *de minimis* exception to section 706(b) of the Federal Food, Drug, and Cosmetic Act (the act). In a final rule published elsewhere in the issue of the **Federal Register**, FDA is removing the regulations permanently listing D&C Red No. 19 for use in externally applied drugs and cosmetics and removing the regulation that provides for the provisional use of its lakes.

DATE: Objections by August 15, 1988.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5676.

SUPPLEMENTARY INFORMATION:

I. Introduction

D&C Red No. 19, which has been in use for many years, is principally the 3-ethochloride of 9-*o*-carboxyphenyl-6-diethylamino-3-ethylamino-3-isoxanthene (CAS Reg. No. 81–88–9). Because D&C Red No. 19 was in use at the time the Color Additive Amendments of 1960 were enacted, it

was provisionally listed for drug and cosmetic use in the **Federal Register** of October 12, 1960 (25 FR 9759)

II. Regulatory History

D&C Red No. 19 is the subject of a color additive petition (CAP 9C0091) that was submitted by the Toilet Goods Association, Inc. (CTFA), 1100 Vermont Ave. NW., Washington, DC 20005) on April 14, 1969, which requested the permanent listing of D&C Red No. 19 for coloring lipsticks, ingested drugs and cosmetics, and externally applied drugs and cosmetics.

In the **Federal Register** of February 4, 1977 (44 FR 6992), FDA published revised provisional regulations which required new chronic toxicity studies on 31 color additives, including D&C Red No. 19, as a condition for continued provisional listing of these color additives.

In the **Federal Register** of February 4, 1983 (48 FR 5262) FDA published a final rule terminating the provisional listing of D&C Red No. 19 for use in ingested drugs and cosmetics. This document acknowledged the withdrawal by CTFA of that portion of CAP 9C0091 that requested permanent listing of D&C Red No. 19 for ingested drugs and cosmetics. The color additive remained provisionally listed for use in externally applied drugs and cosmetics. In the February 4, 1983, document terminating the provisional listing of D&C Red No. 19 FDA explained the findings that D&C Red No. 19 was a carcinogen when ingested by test animals. The rationale for this decision is stated in detail in the **Federal Register** of February 4, 1983. CTFA did not object to the finding of carcinogenicity.

In the **Federal Register** of August 7, 1986 (51 FR 28346), FDA published a final regulation permanently listing D&C Red No. 19 for use in externally applied drugs and cosmetics. In the August 7, 1986, document FDA concluded that the results of chronic toxicity studies demonstrate that D&C Red No. 19 is carcinogenic when administered in the diet to laboratory mice and rats. Specifically, the agency concluded from the data that dietary exposure to D&C Red No. 19 causes an increase in the number of female mice with hepatocellular neoplasms. Likewise, the agency determined that D&C Red No. 19 in the diet induces neoplasms in the thyroid gland of male rats and a tumorigenic effect in the parathyroid of male rats.

In its submissions in support of its petition, CTFA presented several arguments that raised questions about the relevance of the ingestion studies to a determination of the safety of the external uses of D&C Red No. 19. The entire discussion of FDA's determination that this color additive induced cancer in animals, including FDA's responses to the issues raised by CTFA, as summarized below, appeared in the listing document in the **Federal Register** (51 FR 28346).

A. Difference in Reported Incidence Figures

In the submissions, CTFA noted that the tumor incidence data on the mouse study and a rat study as reported by FDA (48 FR 5262) in its order terminating the provisional listing of D&C Red No. 19 for use in ingested cosmetics and drugs differed from those reported by the testing laboratory. FDA exlained in the August 7, 1986, document that the difference was due largely to a different interpretation of the data by FDA pathologists compared to the interpretation of the data by the pathologists from the testing laboratory. The conclusions, however were the same, namely that dietary exposure to D&C Red No. 19 causes treatment or dose-related increases of tumors in mice and rats.

B. Interpretation of Maximum Tolerated Dose

In the submissions CTFA asserted that the maximum tolerated dose was exceeded in the second of the rat studies with D&C Red No. 19 and this violated the National Cancer Institute (NCI) guidelines for carcinogenicity testing, thereby raising questions about the carcinogenic effect observed with the dose (0.075 percent) in this study. FDA concluded that there was no indication whatsoever that the maximum tolerated dose was exceeded in the male rats tested (the gender shown to be positive in the study— thus CTFA's arguments on this issue were of little relevance and impact.

C. Significance of Mouse Liver Tumors

In its submissions, CTFA questioned the significance of the mouse liver tumors observed in the chronic tests. FDA evaluated the arguments presented by CTFA and concluded that, based on the agency's analysis of the data, the hepatocellular tumors observed in the female mice were the result of the ingestion of D&C Red No. 19 and must be considered in any evaluation of the safety of the color additive.

D Mechanism of Carcinogenicity

CTFA stated in its submissions that it reviewed the information available on D&C Red No. 19 to determine the likely mechanism of action of the additive and contended that currently available evidence does not demonstrate that D&C Red No. 19 is a primary carcinogen. CTFA presented arguments based upon the results of mutagenicity studies to support its contention. FDA concluded that the arguments CTFA presented regarding mutagenicity (and impurity activity) do not provide evidence that D&C Red No. 19 is not a carcinogen.

CTFA also argued that it is possible that a secondary mechanism may have caused each of the types of tumors observed in the chronic bioassays of D&C Red No. 19.

In response to the several arguments presented by CTFA, FDA stated that the arugments were speculative, and CTFA had not submitted factual evidence that D&C Red No. 19 does indeed act as a secondary carcinogen. Finally, FDA concluded that CTFA had failed to present any basis on which to find that D&C Red No. 19 is a secondary carcinogen.

In the document permanently listing this color FDA concluded that although studies established that the color additive caused cancer in animals, quantitative risk assessment of the color indicated that the risk of human cancer from its use in externally spplied drugs and cosmetics would be extremely low, and that there would be no benefit to the public from prohibiting these uses of the color additive. Thus, FDA concluded that the uses of D&C Red No. 19 in externally applied drugs and cosmetics was safe under the conditions of use prescribed in the regulations permanently listing the color additive.

FDA also concluded that it was appropriate for the agency to apply a *de minimis* exception to the Delaney clause of the act where the color additives impose essentially no additional risk of cancer to the public; that any risk the color additives may present is of no public health consequence; and that, under these circumstances, the Delaney clause does not require a ban of the externally applied use of D&C Red No. 19.

In response to the permanent listing of D&C Red No. 19, the Public Citizen Litigation Group (Public Citizen) filed objections on August 21, 1986, which stayed the effective date of the regulation. Public Citizen, however, did not request a hearing. Additionally, on September 8, 1986, CTFA filed comments in support of FDA's permanent listing of D&C Red No. 19.

The CTFA comments specifically stated that CTFA supported the permanent listing of the color additive. The comments did not represent objections to the listing rule. In the introduction to its comments, however,

CTFA asserted that some cancer experts consider the liver of the inbred mouse to be an invalid system for carcinogenicity testing and the comments stated that these experts considered mouse liver tumors to be of limited relevance to human risk because of the extreme sensitivity of the mouse liver to chemical insult. FDA finds that CTFA's arguments on this subject were discussed in detail in the Federal Register in the listing document (51 FR 28346 at 28351). CTFA did not present any new data in support of its position and did not request a hearing on the subject.

CTFA also postulated that thyroid tumors induced in rats fed D&C Red No. 19 may have been produced by thyroid hormonal imbalance rather than by the direct carcinogenic action of the test compound, D&C Red No. 19. FDA finds that no data to support this position were submitted by CTFA and there was no request for a hearing on this contention. This subject was also discussed in detail in the Federal Register (51 FR 28351).

FDA, in the Federal Register of October 6, 1986 (51 FR 35509), published a final rule which removed the stay of the effective date for the permanent listing of D&C Red No. 19 and established the effective date of the permanent listing for use in externally applied drugs and cosmetics as October 6, 1986. In that rule, the Public Citizen's objections, which stated that the Delaney clause of the act unequivocally prohibits approval of a color additive (D&C Red No. 19), were evaluated by FDA and rejected. In rejecting the objections, FDA concluded that "* * * under any reasonable standard, D&C Orange No. 17 and D&C Red No. 19 are safe for use in externally applied drugs and cosmetics and that the Delaney clause does not bar permanent listing of these color additives."

Following publication of the final rule establishing the effective date for D&C Red No. 19, which also rejected Public Citizen's objections to the rulemaking, Public Citizen filed suit in the U.S. Court of Appeals for the District of Columbia to overturn the FDA decision to permanently list the color additives D&C Orange No. 17 and D&C Red No. 19 (*Public Citizen* v. *Young*, No. 86–1548).

In the Federal Register of February 19, 1987 (52 FR 5081 and 52 FR 5083) FDA published clarifications to the preamble of the August 7, 1986, documents permanently listing D&C Red No. 19 and D&C Orange No. 17. These documents refined the position taken by FDA that the Delaney clause of the act did not apply to this situation. The documents were summarized by the Court of Appeals as follows:

> These notices effectively apply quantitative risk assessment at the stage of determining whether a substance "induce[s] cancer in man or animal". They assert that even where a substance does cause cancer in the conventional sense of the term, the FDA may find that it does not "induce cancer in man or animal" within the meaning of 21 U.S.C. [§] 376(b)(5)(B).

In an opinion dated October 23, 1987, the court issued its opinion regarding Public Citizen's challenge of FDA's decision to permanently list the color additives D&C Orange No. 17 and D&C Red No. 19.

> In sum, we hold that the Delaney Clause of the Color Additive Amendments does not contain an implicit *de minimis* exception for carcinogens with trivial risk to humans. We based this decision on our understanding that Congress adopted an "extraordinarily rigid" position, denying the FDA authority to list a dye once it is found to "induce cancer in * * * animals" in the conventional sense of the term, and, * * * that the agency's *de minimis* interpretation of the Delaney Clause of the Color Additive Amendments is contrary to law. The listing decisions for D&C Orange No. 17 and D&C Red No. 19 based on that interpretation must therefore be corrected.

The U.S. Supreme Court subsequently refused to grant a writ of certiorari on the Appeals Court decision.

III. Conclusions

FDA has reviewed the petition for D&C Red No. 19 in light of its finding that the color additive has been shown to induce cancer and the Court's decision that there is no *de minimis* exception to the Delaney anti-cancer clause. The agency concludes that there is no basis upon which to grant the petition. Therefore FDA denies the color additive petition to permanently list D&C Red No. 19 for use in externally applied drugs and cosmetics. This action is based not only upon previous findings by FDA that this color additive is carcinogenic in test animals, but on its continuing belief that those findings are correct. In addition, there are no scientific issues raised by CTFA that have not been addressed. Applying these findings to the decision of the U.S. Court of Appeals for the District of Columbia that D&C Red No. 19, which had been found to be a carcinogen in animals, cannot be listed as a color additive on externally applied drugs and cosmetics on the basis of a *de minimis* exception to section 706(b) of the act, FDA concludes that it must deny the petition.

In a final rule published elsewhere in this issue of the Federal Register, FDA is removing the regulations permanently listing D&C Red No. 19 for use in externally applied drugs and cosmetics and removing the regulations that provide for the provisional use of its lakes. That final rule is referenced, along with the earlier Federal Register documents of February 4, 1983 (48 FR 5262), August 7, 1986 (51 FR 28346), October 6, 1986 (51 FR 35509) and February 19, 1987 (52 FR 5081).

Any person who will be adversely affected by this regulation may at any time on or before August 15, 1988, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factural information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the Federal Register.

This notice is issued under the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 706 (b), (c), and (d), 74 Stat. 399–403 (21 U.S.C. 376 (b), (c), and (d) and the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376 note)) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10).

Dated: July 12, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–16042 Filed 7–14–88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83C-0102]

Color Additives; Denial of Petition for Listing of D&C Orange No. 17 for Use in Externally Applied Drugs and Cosmetics

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is denying the color additive petition to permanently list D&C Orange No. 17 for use in externally applied drugs and cosmetics. This action is based upon previous findings by FDA that this color additive is carcinogenic in test animals and the finding of the U.S. Court of Appeals for the District of Columbia that D&C Orange No. 17, which had been found to be a carcinogen in animals, cannot be listed as a color additive in externally applied drugs and cosmetics on the basis of a *de minimis* exception to section 706(b) of the Federal Food, Drug, and Cosmetic Act (the act). In a final rule published elsewhere in this issue of ther **Federal Register**, FDA is removing the regulations permanently listing D&C Orange No. 17 for use in externally applied drugs and cosmetics and removing the regulations that provide for the provisional use of its lakes.

DATE: Objections by August 15, 1988.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION:

I. Introduction

D&C Orange No. 17, which has been in use for many years, is the chemical 1-[(2,4-dinitrophenyl)azo]-2-naphthalenol (CAS Reg. No. 3468-63-1). Because D&C Orange No. 17 was in use at the time the Color Additive Amendments of 1960 were enacted, it was provisionally listed for drug and cosmetic use in the **Federal Register** of October 12, 1960 (25 FR 9759).

II. Regulatory History

D&C Orange No. 17 is the subject of a color additive petition (CAP 9C0090) that was submitted by the Toilet Goods Association, Inc. (now the Cosmetic, Toiletry and Fragrance Association, Inc. (CTFA), 1100 Vermont Ave. NW., Washington, DC 20005) on April 14, 1969. The petition requested the permanent listing of D&C Orange No. 17 for coloring lipsticks, ingested drugs and cosmetics, and externally applied drugs and cosmetics. The petition was amended on May 14, 1974, to include the listing of D&C Orange No. 17 for eye-area use.

In the **Federal Register** of February 4, 1977 (44 FR 6992), FDA published revised provisional regulations which required new chronic toxicity studies on 31 color additives, including D&C Orange No. 17, as a condition for the continued provisional listing of these color additives.

In the **Federal Register** of April 1, 1983 (48 FR 14045), FDA published a notice denying that portion of CAP 9C0090 dealing with ingested uses of D&C Orange No. 17 in drugs and cosmetics and withdrawing that portion of the petition that requested listing of D&C Orange No. 17 for eye area use. (Also published in the April 1, 1983, issue of the **Federal Register** (48 FR 13976) was a final regulation extending the provisional listing of D&C Orange No. 17 for use in externally applied drugs and cosmetics.) The denial was based upon a finding by FDA that D&C Orange No. 17 was a carcinogen when ingested by test animals. The rationale for this decision is stated in the **Federal Register** document of April 1, 1983. CTFA did not object to the denial.

In the **Federal Register** of August 7, 1986 (51 FR 28331), FDA published a final regulation permanently listing D&C Orange No. 17 for use in externally applied drugs and cosmetics. In the August 7, 1986, document FDA concluded that the results of chronic toxicity studies demonstrate that D&C Orange No. 17 is carcinogenic when administered in the diet to laboratory mice and rats. Specifically the agency concluded from the data that dietary exposure to D&C Orange No. 17 produced the carcinogenic effect of a statistically significant increase in the number of female rats with hepatocellular neoplasms as compared to the control groups. Moreover, the agency determined that D&C Orange No. 17 exposure in long-term feeding studies in mice was associated with a statistically significant dose-related increase in the number of male mice with hepatocellular neoplasms as compared to the control groups.

In its submissions, CTFA presented several arguments that raised questions about the relevance of the ingestion studies to a determination of the safety of the external uses of D&C Orange No. 17. The entire discussion of FDA's determination that the color additive induced cancer in animals, including FDA's response to issues raised by CTFA, as summarized below, appeared in the listing document of August 7, 1986 (51 FR 28331).

A. Interpretation of Maximum Tolerated Dose

CFTA asserted that the dose level of the second rat study substantially exceeded the maximum tolerated dose and violated the National Cancer Institute (NCI) guidelines for carcinogenicity testing. However, in summary, the agency concluded that, for the female rats, the maximum tolerated dose was not exceeded and the CTFA's contention that the study violated NCI guidelines for carcinogenicity testing was not substantiated.

B. Significance of Mouse Liver Tumors

CFTA questioned the significance of the mouse liver tumors observed in the chronic test. FDA's Cancer Assessment Committee reviewed the data and CTFA's arguments and reached the following conclusion: CTFA's argument about the high background incidence of liver cancer in mice does not apply to the CD-1 mouse, the strain used in the mouse study. Moreover, CTFA's argument that the maximum tolerated dose was exceeded is misplaced. In the absence of any observed significant treatment-related effects in the high-dose male mouse group in which the increase in hepatocellular neoplasms was observed, the Cancer Assessment Committee concluded that the maximum tolerated dose was not exceeded in the study. Finally, CTFA's arguments concerning the limited statistical significance associated with the male mouse liver tumors were evaluated. The Cancer Assessment Committee noted that the tumor incidence in treated mice was greater than the historical control values and concluded that the hepatocellular tumors observed in the male mice were the result of the ingestion of D&C Orange No. 17. Although a scientific review panel of the U.S. Public Health Service scientists reached different conclusions with respect to the mouse bioassay, the agency concluded that this difference was inconsequential in light of the results of the rat feeding study.

C. Mechanism of Carcinogenicity and Significance of "Benign" Tumors

In its submisssions, CTFA offered the following arguments concerning the significance of benign tumors: "[In the female rat] only the incidence of benign hepatocellular adenomas (neoplastic nodules) was increased. There was no significant increase in the incidence of malignant carcinomas in the treated

females. Nor was there any effect in the males fed the same level of the color additive. This indicates a very weak effect apparently occurring only at high doses that are toxic to the liver. This suggests an indirect mechanism of neoplasia secondary to toxic damage." In summary, the FDA response stated that the data lead the agency to conclude that D&C Orange No. 17 most likely exhibits a primary effect. CTFA has offered no evidence to the contrary. CTFA also suggested in its submission that the female rat liver tumors in the 1 percent dose group are caused by an "indirect mechanism of neoplasia secondary to toxic damage * * *." However, FDA noted that CTFA had not submitted any scientific evidence to support such a hypothesis.

In the document listing this color, FDA concluded, on the basis of its evaluation of the data for the color additive, that although studies established that the color additive caused cancer in animals, quantitative risk assessment of the color indicated that the risk of human cancer from its use in externally applied drugs and cosmetics would be extremely low, and that there would be no benefit to the public from prohibiting these uses of the color additive. Thus, FDA concluded that the use of D&C Orange No. 17 in externally applied drugs and cosmetics was safe under the conditions of use prescribed in the regulations permanently listing the color additive.

FDA also concluded that it was appropriate for the agency to apply a *de minimis* exception to the Delaney clause of the act where the color additive imposes essentially no additional risk of cancer to the public; that any risk the color additive may present is of no public health consequence; and that, under these circumstances, the Delaney clause does not require a ban of the esternally applied uses of D&C Orange No. 17.

In response to the permanent listing of D&C Orange No. 17, the Public Citizen Litigation Group (Public Citizen) filed objections on August 21, 1986, which stayed the effective date of the regulation. However, Public Citizen did not request a hearing. Additionally, on September 8, 1986, CTFA filed comments in support of the FDA's permanent listing of D&C Orange No. 17.

The CTFA comments specifically stated that CTFA supported the permanent listing of the color additive. The comments did not represent objections to the listing rule. In the introduction to its comments, however, CTFA asserted that some cancer experts consider the liver of the inbred mouse to be an invalid system for carcinogenicity testing and the comments stated that these experts considered mouse liver tumors to be of limited relevance to human risk because of the extreme sensitivity of the mouse liver to chemical insult. FDA finds that CTFA's arguments on this subject were discussed in detail in the **Federal Register** in the listing document (51 FR 28335 and 28336). CTFA did not present any new data in support of its position and did not request a hearing on the subject.

Additionally, CTFA also commented, in the case of the female rat liver tumors, that the tumors were benign and found only at a high feeding level that probably exceeded the maximum tolerated dose. CTFA further stated that the female rat liver data suggest an indirect mechanism for causing tumors that was secondary to toxic damage, which could not occur in humans because they would never be exposed to such high levels of D&C Orange No. 17. FDA finds that CTFA's safety arguments on this issue were also addressed in detail in the **Federal Register** (51 FR 28331). Additionally, CTFA has at no time submitted data in support of its speculation that such a secondary mechanism may occur.

FDA, in the **Federal Register** of October 6, 1986 (51 FR 35509), published a final rule which removed the stay of the effective date for the permanent listing of D&C Orange No. 17 and established the effective date of the permanent listing for use in externally applied drugs and cosmetics as of October 6, 1986. In that rule, Public Citizen's objections, which stated that the Delaney clause of the act unequivocally prohibits approval of a color additive (D&C Orange No. 17), were evaluated by FDA and rejected. In rejecting the objections, FDA concluded that "* * * under any reasonable standard, D&C Orange No. 17 and D&C Red No. 19 are safe for use in externally applied drugs and cosmetics and that the Delaney clause does not bar the permanent listing of these color additives."

Following publication of the final rule establishing the effective date for D&C Orange No. 17, which also rejected Public Citizen's objections to the rulemaking, Public Citizen filed suit in the U.S. Court of Appeals for the District of Columbia to overturn the FDA decision to permanently list the color additives D&C Orange No. 17 and D&C Red No. 19 (*Public Citizen* v. *Young*, No. 86–1548).

In the **Federal Register** of February 19, 1987 (52 FR 5081 and 52 FR 5083) FDA published clarifications to the preamble of the August 7, 1986, documents permanently listing D&C Red No. 19 and D&C Orange No. 17. These documents refined the position taken by FDA that the Delaney clause of the act did not apply to this situation. The clarification documents were summarized by the Court of Appeals as follows:

> These notices effectively apply quantitative risk assessment at the stage of determining whether a substance "induce[s] cancer in man or animal". They assert that even where a substance does cause cancer in the conventional sence of the term, the FDA may find that it doe not "induce" cancer in man or animal" within the meaning of 21 U.S.C. [§] 376(b)(5)(B).

In an opinion dated October 23, 1987, the court issued its opinion regarding the Public Citizen challenge of the decision by FDA to permanently list the color additives D&C Red No. 19 and D&C Orange No. 17:

> In sum, we hold that the Delaney Clause of the Color Additive Amendments does not contain an implicit *de minimis* exception for carcinogens with trivial risk to humans. We based this decision on our understanding that Congress adopted an "extraordinarily rigid" position, denying the FDA authority to list a dye once it is found to "induce cancer in * * * animals" in the conventional sense of the term, and, * * * that the agency's *de minimis* interpretation of the Delaney Clause of the Color Additive Amendments is contrary to law. The listing decisions for D&C Orange No. 17 and D&C Red No. 19 based on that interpretation must therefore be corrected.

The U.S. Supreme Court subsequently refused to grant a writ of certiorari on the Appeals Court decision.

III. Conclusions

FDA has reviewed the petition for D&C Orange No. 17 in light of its finding that the color additive has been shown to induce cancer and the Court's decision that there is no *de minimis* exception to the Delaney anti-cancer clause. The agency concludes that there is no basis upon which to grant the petition. Therefore FDA denies the color additive petition to permanently list D&C Orange No. 17 for use in externally applied drugs and cosmetics. This action is based not only upon previous findings by FDA that this color additive is carcinogenic in test animals, but on its continuing belief that those findings are correct. In addition, there are no scientific issues raised by CTFA that have not been addressed. Applying these findings to the decision of the U.S. Court of Appeals for the District of Columbia that D&C Orange No. 17, which had been found to be a carcinogen in animals, cannot be listed as a color additive in externally applied drugs and cosmetics on the basis of a *de minimis* exception to section 706(b) of

the act, FDA concludes that it must deny the petition.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing the regulations permanently listing D&C Orange No. 17 for use in externally applied drugs and cosmetics and removing the regulation that provides for the provisional use of its lakes. That final rule is referenced, along with the earlier **Federal Register** documents of April, 1983 (48 FR 14045), August 7, 1986 (51 FR 28331), October 6, 1986 (51 FR 35509) and February 19, 1987 (52 FR 5081).

Any person who will be adversely affected by this regulation may at any time on or before August 15, 1988, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register.**

This notice is issued under the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 706 (b), (c), and (d), 74 Stat. 399–403 (21 U.S.C. 376 (b), (c), and (d)) and the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376 note)) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10).

Dated: July 12, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–16043 Filed 7–14–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 83C–0127]

Color Additives; Denial of Petition for Listing of D&C Red No. 8 and D&C Red No. 9 for Use in Ingested Drug and Cosmetic Lip Products and in Externally Applied Drugs and Cosmetics

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is denying the color additive petition to permanently list D&C Red Nos. 8 and 9 for use in ingested drugs and cosmetic lip products and in externally applied drugs and cosmetics. This action is based upon previous findings by FDA that these color additives are carcinogenic in test animals and on the decision of the U.S. Court of Appeals for the District of Columbia on D&C Orange No. 17 and D&C Red No. 19 that carcinogenic color additives cannot be listed as color additives on the basis of a *de minimis* exception to the color additive Delaney clause in the Federal Food, Drug, and Cosmetic Act (the act). In a final rule, published elsewhere in this issue of the **Federal Register**, FDA is removing the regulations permanently listing D&C Red Nos. 8 and 9 for use in ingested drugs and cosmetic lip products and in externally applied drugs and cosmetics and removing the regulations that provide for the provisional use of their lakes.

DATE: Objections by August 15, 1988.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5676.

SUPPLEMENTARY INFORMATION:

I. Introduction

D&C Red Nos. 8 and 9 have been in use for many years. D&C Red No. 8 is principally the monosodium salt of 5-chloro-2-[(2-hydroxy-1-naphthalenyl)azo]-4-methylbenzenesulfonic acid (CAS Reg. No. 2092–56–0). D&C Red No. 9 is principally the barium salt (1:2) of 5-chloro-[(2-hydroxy-1-naphthalenyl)azo-4-methylbenzenesulfonic acid (CAS Reg. No. 5160–2–1). Because D&C Red Nos. 8 and 9 were in use at the time the Color Additive Amendments of 1960 (the amendments) were enacted, they were provisionally listed for drug and cosmetic use in the **Federal Register** of October 12, 1960 (25 FR 9759).

II. Regulatory History

D&C Red Nos. 8 and 9 have been the subject of a color additive petition (CAP 5C0028), submitted by the Toilet Goods Association, Inc. (now the Cosmetic, Toiletry and Fragrance Association, Inc. (CTFA), 1100 Vermont Ave. NW., Washington, DC 20005) on May 17, 1965. The petitioner has requested the permanent listing of D&C Red Nos. 8 and 9 for use generally in coloring drugs and cosmetics.

In the **Federal Register** of February 4, 1977 (44 FR 6991), FDA published revised provisional regulations which required new chronic toxicity studies on 31 color additives, including D&C Red Nos. 8 and 9, as a condition to the continued provisional listing of these color additives.

In the **Federal Register** of December 5, 1986 (51 FR 43877), FDA published a final rule permanently listing D&C Red Nos. 8 and 9 for use in ingested drug and cosmetic lip products and in externally applied drugs and cosmetics. In the December 5, 1986, document, FDA concluded that the results of chronic toxicity studies demonstrate that D&C Red No. 9 is carcinogenic when administered in the diet of laboratory rats. Specifically, the agency concluded from the data that dietary exposure to D&C Red No. 9 is associated with an increase in the occurrence of splenic cancer in male rats and, thus, that D&C Red No. 9 induces cancer when tested in laboratory animals. As discussed in the final rule (51 FR 43877), D&C Red No. 8 has not been tested in a chronic feeding study, but FDA has concluded that, for the purpose of assessing safety, D&C Red No. 8 and D&C Red No. 9 are toxicologically equivalent. The petitioner has agreed with this conclusion. Thus, the agency has concluded that D&C Red No. 8 is also a carcinogen and that action on both of these color additives can be taken on the basis of the results of chronic studies on D&C Red No. 9.

The December 5, 1986, final rule permanently listing D&C Red Nos. 8 and 9 also responded to CTFA's arguments in support of its petition. In its submission in support of its petition, CTFA raised questions about the

relevance of the ingestion studies to a determination of the safety of the uses of D&C Red Nos. 8 and 9, as well as several other issues. FDA's determination that these color additives induce cancer in animals, including FDA's responses to CTFA's contentions, summarized below, appeared in the listing document in the **Federal Register** (51 FR 43877).

1. In its laboratory reports, CTFA contended that the chronic studies with mice demonstrated no significant compound-related effects. In addition, CTFA contended that, in its chronic studies with rats, at up to 0.05 percent color additive, there were no treatment-related effects. However, CTFA acknowledged that, at the 1.0 percent feeding level, signs of anemia were evident in both males and females; in addition, in male rats, there were serveral notable treatment-related splenic lesions.

CTFA also raised various points related to the conduct of the National Cancer Institute (NCI)/National Toxicology Program (NTP) chronic rat study and the validity of the data derived from the bioassay. CTFA maintained that dosages used in the NCI/NTP study exceeded the maximum tolerated dose; that the results of the study were flawed due to improper caging of animals, alleged violations of good laboratory practices and the presence of other carcinogens in testing rooms; and that D&C Red No. 9 produces cancer by a secondary mechanism and not by direct carcinogenic action.

FDA responded to these points in the December 5, 1986, final rule. The agency agreed that the increase in the number of rats with splenic neoplasms in the CTFA study was not large but rejected CTFA's claim that the study could not be used to provide supportive evidence that D&C Red No. 9 is a carcinogen. The ageny considered and rejected CTFA's arguments that the outcome of the NCI/NTP study, (which concluded, among other things, that the color additive was carcinogenic for male F–344 rats), was materially compromised by deficiencies in its design or conduct. The agency noted that the chronic toxicity/carcinogenicity studies of D&C Red No. 9 (the NCI/NTP and CTFA studies as well as FDA's own studies) demonstrated a common pattern of unusual splenic lesions which occurred only in the treatment groups, and that similar lesions had been described in connection with several other compounds known to induce splenic sarcomas in F–344 rats. These findings, combined with the positive result of the NCI/NTP study, support the agency's conclusion that exposure to D&C Red No. 9 is associated with the occurence of splenic cancer in male F–344 rats.

With respect to the issue of secondary mechanism, CTFA maintained that there is a level of administration of D&C Red No. 9 that represents a threshold, and that it does not induce cancer when administered at or below that threshold. FDA rejected this argument because no experimental evidence was submitted in the CTFA submission to support this hypothesis, and, as a result, no serious analysis could be made of this issue.

2. CTFA sponsored an in vitro percutaneous absorption study on D&C Red No. 9 in an attempt to determine whether this substance penetrates excised skin and whether ingestion study results could be used in evaluating the safety of the use of the color additive in externally applied drugs and cosmetics. FDA found that the study was performed in a generally satisfactory manner and that D&C Red No. 9 did pass though the skin. On this basis, the agency concluded that systemic exposure to the color additive does occur from external use and that the ingestion studies are appropriate for evaluating the safety of the externally applied uses of D&C Red No. 9.

In the December 5, 1986, document permanently listing these color additives, FDA concluded on the basis of its evaluation of the data for the color additives that, although studies established that D&C Red No. 9 caused cancer in laboratory animals, quantitative risk assessment of the two color additives indicated that the risk of human cancer would be extremely low from use in ingested drug and cosmetic lip products (provided that levels of use were lowered to 0.1 percent) and in externally applied drugs and cosmetics. Further, the agency concluded that there would be no benefit to the public from prohibiting these uses of the color additives. Thus, FDA concluded that these uses of D&C Red Nos. 8 and 9 were safe under the limited conditions of use prescribed in the regulations permanently listing these color additives.

In the December 5, 1986, document FDA also concluded that it was appropriate for the agency to apply a *de minimis* exception to the Delaney clause of the act in this instance, where these color additives pose essentially no additional risk of cancer to the public, and risk the color additives may present is of no public health consequence, and, under these circumstances, the Delaney clause does not require a ban of these uses of D&C Red Nos. 8 and 9.

The Public Citizen Litigation Group (Public Citizen) objected to the December 5, 1986 (51 FR 43877), permanent listing of D&C Red Nos. 8 and 9, on the basis that FDA is prohibited under the Delaney clause from approving color additives which have been found to be animal carcinogens. The objections stayed the effective date of the final regulations. Public Citizen did not request a hearing as part of its objections but incorporated the basis for its interpretation of the Delaney clause that it had previously filed in *Public Citizen* v. *Department of Health and Human Services*, and *Public Citizen* v. *Young*, cases on D&C Red No. 19 and D&C Orange No. 17 involving the same legal issues.

CTFA also filed comments on the December 5, 1986, final rule for D&C Red Nos. 8 and 9. The CTFA comments stated that CTFA supported the permanent listing of the color additives D&C Red Nos. 8 and 9. However, CTFA again asserted: (1) That because of an apparent violation of the maximum tolerated dose in the NTP and CTFA studies, the results of the high-dose chronic feeding studies produced questionable evidence of carcinogenicity, and (2) there was scientific evidence that D&C Red No. 9 is not a primary carcinogen.

Concerning (1) above, CTFA stated that it considered that the test compound had been administered in such large amounts that normal functioning of the test animals had been impaired, resulting in tumors which were not directly attributable to the compund itself. FDA discussed CTFA's arguments on this subject in detail in the **Federal Register** (51 FR 43877). CTFA did not present any new data in support of its position and did not request a hearing on the subject.

Concerning its argument that D&C Red No. 9 is not a primary carcinogen, CTFA stated that, according to current scientific understanding, carcinogens may be divided into two broad classes, primary and secondary. Primary carcinogens are those that initiate carcinogenesis by interacting directly with genetic cell material. Secondary carcinogens are those that may inhibit deoxyribonucleic acid (DNA) repair, promote the growth of tumors, suppress immune mechanisms, or have other indirect effects.

CTFA argued that the splenic tumors observed in male rats in both the NTP and CTFA studies may have been the result of a secondary effect, because the evidence in these studies showed that tumors were caused by a toxic effect in rats that could never occur at the much

lower levels to which humans are exposed. FDA discussed CTFA's arguments on this subject in detail in the **Federal Register** (51 FR 43877). CTFA did not present any new data in support of its position and did not request a hearing on the subject.

FDA, in the **Federal Register** of June 5, 1987 (52 FR 21302), published a final rule which confirmed the effective date for the permanent listing of D&C Red Nos. 8 and 9. In response to objections, FDA modified several aspects of the manufacturing process for D&C Red No. 9. In that rule, FDA evaluated and rejected the Public Citizen's objection to the December 5, 1986, final rule (stating that the Delaney clause unequivocally prohibits approval of the color additives D&C Red Nos. 8 and 9) and acknowledged receipt of one CTFA comment (expressing support for the permanent listing of D&C Red Nos. 8 and 9). FDA concluded that, under any reasonable standard, D&C Red No. 8 and D&C Red No. 9 are safe for use in ingested drug and cosmetic lip products and in externally applied drugs and cosmetics, and that the Delaney clause does not bar permanent listing of these color additives.

In the **Federal Register** of July 31, 1987 (52 FR 28552), FDA confirmed the effective date for the June 5, 1987 (52 FR 21302) final rule that amended the color additive regulations to modify the manufacturing process for D&C Red No. 9. The agency received no objections or requests for a hearing on this final rule. Following publication of the July 31, 1987, final rule, Public Citizen on August 3, 1987, filed suit in the U.S. Court of Appeals for the Third Circuit in Philadelphia to overturn the FDA decision to permanently list D&C Red Nos. 8 and 9. Before a decision was reached by that Court of Appeals concerning D&C Red Nos. 8 and 9, the Court of Appeals for the District of Columbia Circuit, decided that "the Delaney clause of the color additive amendments does not contain an implicit *de minimis* exception for carcinogens with trivial risk to humans" and that the listing of D&C Red No. 19 and D&C Orange No. 17, or other carcinogenic color additives, is contrary to law (*Public Citizen* v. *Young*, 831 F.2d 1108 (D.C. Cir. 1987)).

Following this decision, CTFA, an intervenor in the Court of Appeals' case, petitioned the U.S. Supreme Court to grant a writ of certiorari on the latter decision. On April 28, 1988, the Supreme Court denied certiorari. On May 26, 1988, FDA asked the Court of Appeals for the Third Circuit to remand the case on D&C Red Nos. 8 and 9 to the agency so that it could revoke the listings of these colors, consistent with the D.C. Circuit's decision, involving the same issues, on D&C Red No. 19 and D&C Orange No. 17. Subsequently the Court of Appeals for the Third Circuit Granted the agency's request and remanded to FDA the decision on D&C Red Nos. 8 and 9.

III. Conclusions

FDA has reviewed the petition for D&C Red Nos. 8 and 9 in light of its finding of carcinogenicity and the decision of the U.S. Court of Appeals for the District of Columbia Circuit on D&C Red No. 19 and D&C Orange No. 17. FDA concludes that it must deny the color additive petition to permanently list D&C Red Nos. 8 and 9 for use in ingested drug and cosmetic lip products and in externally applied drugs and cosmetics. FDA believes that previous findings that D&C Red No. 9 and, (because it is toxicologically equivalent) D&C Red No. 8 are carcinogenic in laboratory test animals are correct. In addition, there are no scientific issues raised by CTFA that have not been addressed. Under the reasoning of the U.S. Court of Appeals for the District of Columbia Circuit that D&C Orange No. 17 and D&C Red No. 19 cannot be listed as color additives on the basis of a *de minimis* exception to section 706(b) of the act, FDA concludes that it must deny the petition for D&C Red Nos. 8 and 9.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing the regulations permanently listing D&C Red Nos. 8 and 9 for use in ingested drug and cosmetic lip products and in externally applied drugs and cosmetics and removing the regulations that provide for the provisional use of their lakes (51 FR 43877; December 5, 1986). Related **Federal Register** documents were published on June 5, 1987 (52 FR 21302), and July 31, 1987 (52 FR 28552).

Any person who will be adversely affected by this regulation may at any time on or before August 15, 1988, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particlar objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register.**

This notice is issued under the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 706(b), (c), and (d), 74 Stat. 399–403 (21 U.S.C. 376(b), (c), and (d), the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376 note))], and the Administrative Procedure Act (5 U.S.C. 556, 557), and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10).

Dated: July 12, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–16044 Filed 7–14–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[DES 88–38]

Availability of Draft Wilderness Review Amendment and Supplemental Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability of a Draft Wilderness Review Amendment and Supplemental Environmental Impact Statement for the Wilderness Proposal of the Final Comprehensive Conservation Plan/Environmental Impact Statement/Wilderness Review for the Alaska Peninsula National Wildlife Refuge, Alaska.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared for public review a Draft Wilderness Review Amendment and Supplemental Environmental Impact Statement for the Wilderness Proposal of the Final Comprehensive Conservation Plan/

Environmental Impact Statement/ Wilderness Review for the Alaska Peninsula National Wildlife Refuge, Alaska, pursuant to section 3(d) of the Wilderness Act of 1964, section 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Lands Act), and section 102(2)(C) of the National Environmental Policy Act of 1969. The Draft Wilderness Review Amendment and Supplemental Environmental Impact Statement analyzes the impacts of four alternative wilderness proposals for the Alaska Peninsula National Wildlife Refuge.

DATES: Comments on the draft document must be submitted on or before August 30, 1988, to receive consideration in the preparation of the Final Supplemental Environmental Impact Statement.

ADDRESS: Comments should be sent to: Regional Director, U.S. Fish and Wildlife Service, 1011 E.Tudor Road, Anchorage, Alaska 99503–6199 (Attn: William Knauer).

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503–6199; telephone (907) 786–3399.

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the Draft Statement may be obtained by contacting Mr. Knauer.

Copies of the Draft Wilderness Review Amendment and Supplemental Environmental Impact Statement are also available for review at the Office of the Regional Director, address as listed previously, as well as at the office of the Alaska Peninsula National Wildlife Refuge, King Salmon, Alaska, and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuges, Main Interior Bldg., 18th and C Streets NW., Washington, DC 20240;

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 NE. Multnomah Street, Suite 1692, Portland, OR 97232;

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 Gold Avenue SW., Albuquerque, NM 87103;

U.S. Fish and Wildlife Service, Refuges and Wildlife, Federal Building, Fort Snelling, Twin Cities, MN 55111;

U.S. Fish and Wildlife Service, Refuges and Wildlife, Richard B. Russell Federal Bldg., 75 Spring Street SW., Atlanta, GA 30303;

U.S. Fish and Wildlife Service, Refuges and Wildlife, One Gateway Center, Suite 700, Newton Corner, MA 02158; and

U.S. Fish and Wildlife Service, Refuges and Wildlife, 1340 Union Blvd., Lakewood, CO 80225.

The Draft Wilderness Review Amendment and Supplemental Environmental Impact Statement for the Wilderness Proposal of the Final Comprehensive Conservation Plan/ Environmental Impact Statement/ Wilderness Review for the Alaska Peninsula National Wildlife Refuge was developed by the U.S. Fish and Wildlife Service, U.S. Department of the Interior, to fulfill the requirements of section 1317(a) of the Alaska Lands Act. This section requires the Secretary of the Interior to review, in accordance with section 3(d) of the Wilderness Act, all lands in refuges in Alaska not Congressionally designated as wilderness as to their suitability or nonsuitability for the preservation as wilderness and report Department recommendations to the President.

Although large tracts of land in the refuge were found to meet the criteria of the Wilderness Act for designation as wilderness, not all of these lands were proposed for wilderness designation because of management strategies that will be used to meet refuge purposes. As a result, a range of wilderness alternatives was evaluated subsequent to the Service's selection of its proposed management alternative in the Final Alaska Peninsula Plan. Four wilderness proposals, ranging from recommending all refuge lands that qualify for wilderness designation to recommending no additional lands for wilderness designation, were examined in the Draft Statement. The Record of Decision for the Final Alaska Peninsula Plan recommended that an additional 640,000 acres be proposed for designation as wilderness as does the proposed action in the Wilderness Review Amendment and Supplemental Environmental Impact Statement.

The wilderness review in the Final Alaska Peninsula Plan/Environmental Impact Statement/Wilderness Review discussed the wilderness suitability of lands on the refuge, but did not adequately evaluate the environmental impacts of the wilderness proposal. To ensure full compliance with the Wilderness Act and the National Policy Act, the Fish and Wildlife Service has prepared this Wilderness Review Amendment and Supplemental Environmental Impact Statement, clearly discussing the proposal for and environmental impacts of wildeness designation on the refuge.

All agencies and persons wishing to comment are urged to do so as soon as possible. However, all comments received by the date given above will be considered in preparation of the Final Supplemental Environmental Impact Statement.

Date: July 8, 1988.

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 88–15622 Filed 7–14–88; 8:45 am]

BILLING CODE 4310–55–M

Geological Survey

Application Establishing a Tentative Closing Date for Transmittal of Applications Under the Water Resources Research Grant Program for Fiscal Year 1989

Applications are invited for water research projects under the Water Resources Research Grant Program.

Authority for this program is contained in section 105 of Pub. L. 98–242, Water Resources Research Act of 1984. (42 U.S.C. 10301–10309)

The purpose of this program is to provide matching grants for research concerning any aspect of water resource-related problems deemed to be in the national interest.

Applications may be submitted by water resources research institutes and other qualified educational institutions, private foundations, private firms, individuals, and agencies of State or local governments.

Closing Date for Transmittal of Applications

Applications are tentatively due on or before October 14, 1988. The announcement will state the actual due date for receipt of the applications.

Program Information

This program supports research related to the following general areas of national interest: (1) Aspects of the hydrologic cycle; (2) supply and demand for water; (3) demineralization of saline and other impaired waters; (4) conservation and best use of available supplies of water and methods of increasing such supplies; (5) water reuse; (6) depletion and degradation of groundwater supplies; (7) improvements in the productivity of water when used for agricultural, municipal, or commercial purposes; and (8) the economic, legal, engineering, social, recreational, biological, geographic, ecological, and other aspects of water problems. The research interests for Fiscal Year (FY) 1989 are: (1) Groundwater quality; (2) water quality management; (3) institutional change in water resource management; and (4) climate variability and the hydrologic cycle.

Application Forms

The announcement is expected to be available on or about August 15, 1988, and may be obtained by writing to the U.S. Geological Survey, Attn: Melissa Calloway—MS 205C, Office of Procurement and Contracts, 12201 Sunrise Valley Drive, Reston, VA 22092 and requesting a copy of announcement 7442. All organizations that applied for a FY 1988 award, all Historically Black Colleges and Universities, and all organizations that requested to be retained on the mailing list since the last announcement will be mailed a copy of the announcement.

Further Information: For further information contact Robert Robinson—MS 426, U.S. Geological Survey, Water Resources Division, 12201 Sunrise Valley Drive, Reston, VA 22092. Telephone: 703–648–6813.

(Catalog of Federal Domestic Assistance Number 15.806)

Dated: July 11, 1988.

Paul A. Denett,

Acting Assistant Director for Administration.

[FR Doc. 88–15923 Filed 7–14–88; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

[AK–963–4213–15; AA–39595]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(f), will be issued to Chevak Company for approximately 7.20 acres. The lands involved are in the vicinity of Chevak, Alaska.

A parcel of land located within Sec. 32, T. 16 N., R. 90 W., Seward Meridian.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in *The Tundra Drums*. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until August 15, 1988 to file an appeal.

However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Ann Johnson,

Chief, Branch of Calista Adjudication.

[FR Doc. 88–15921 Filed 7–14–88; 8:45 am]

BILLING CODE 4310–JA–M

[WY–930–08–4332–09]

Intent To Prepare Environmental Impact Statement; Thirteen Western States

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental impact statement and conduct public scoping.

SUMMARY: Notice is hereby given that, in accordance with the National Environmental Policy Act of 1969, as amended, the Bureau of Land Management (BLM), will prepare an Environmental Impact Statement (EIS) on vegetation treatment measures proposed for use on BLM administered lands in thirteen contiguous Western States. The purpose of the vegetation treatment program is to manage the vegetation for improved forage and habitat condition for wildlife and livestock, and provide watershed protection. Potential vegetation treatment measures include biological, chemical, mechanical, and thermal methods, individually and in combination. The EIS will analyze ground and aerial application of herbicides.

DATES: The public is invited to submit issues, concerns, and alternative treatment suggestions in writing. Responses and comments will be accepted until Thursday, August 15, 1988. Written comments should be sent to: Jim Melton; Team Leader; Bureau of Land Management; Casper District; 1701 East E Street; Casper, Wyoming 82601.

Scoping meetings will be conducted at the following locations and times:

Arizona

Four scoping meetings will be conducted on August 2, 1988, from 7 to 9 p.m. at the following locations:

Arizona Strip District, Vermillion/Shivwits Resource Area Office, 225 North Bluff Street, St. George, Utah 84770

Safford District Office, 425 East 4th Street, Safford, Arizona 85546

Phoenix District, 2015 West Deer Valley Road, Yuma, Arizona 85364

Yuma District Office, 3150 Winsor Avenue, Phoenix, Arizona 85027

Colorado

None planned.

Idaho

A scoping meeting will be conducted on August 1, 1988, at 7 p.m. at the following location:

Boise District Office, District Conference Room, 3948 Development Avenue, Boise, ID 83705

Montana

None planned.

Nevada

None planned.

New Mexico

Scoping meetings will be conducted at the following times and locations:

1. August 3, 1988, at 1 p.m.—Agricultural Auditorium, New Mexico State University Campus. Las Cruces, New Mexico 88005
2. August 4, 1988, at 10 a.m.—Bondurant Room, Roswell Public Library, Roswell, New Mexico 88201
3. August 9, 1988, at 7 p.m.—District Office Conference Room, 435 Montano Road NE, Albuquerque, New Mexico 87107
4. August 10, 1988, at 7 p.m.—Sagebrush Inn, Highway 64, Taos, New Mexico 87571
5. August 11, 1988, at 1 p.m.—Farmington Resource Area Office, Conference Room, 1235 La Plata Highway, Farmington, New Mexico 87401

Oregon

A scoping meeting will be conducted on August 4, 1988, at 7 p.m. at the following location:

Riverhouse Motor Inn, Mt. Bachelor Room, Bend, OR 97701

Utah

A scoping meeting will be conducted on August 5, 1988, at 10 a.m. at the following location:

Utah State Office, 4th Floor Conference Room, 324 South State Street, Salt Lake City, UT 84111

Wyoming

A scoping meeting will be conducted on August 9, 1988, at 1:30 p.m. at the following location:

Casper District Office, 1701 East "E" Street, Casper, WY 82601

ADDRESSES: For the convenience of the public, the following individuals should

be contacted within the respective state for additional information:

Arizona

John Augsburger, Safford District Office, 425 E. 4th Street, Safford, AZ 85546 Phone: (602) 428–4040

Colorado

Scott F. Archer, Colorado State, Office, 2850 Youngfield Street, Lakewood, CO 80215, Phone: (303) 236–1762
Jeanette Pranzo, Colorado State Office, 2850 Youngfield Street, Lakewood, Co 80215, Phone: (303) 776–1752

Idaho

Karl Gebhart, Idaho State Office, 3380 Americana Terrace, Boise, ID 83706 Phone: (208) 334–1892

Montana

Hank McNeel, Montana State Office, Granite Tower, 222 N. 32nd Street, P.O. Box 36800, Billings MT 59107 Phone: (406) 657–6655

Nevada

Steve Smith, Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV. 89520 Phone: (702) 784–5748

New Mexico

Jan Knight, New Mexico State Office, P.O. Box 1449, Santa Fe, NM 87504–1449 Phone: (505) 988–6231

Oregon

Diane White, Oregon State Office, P.O. Box 2965, Portland, OR 97208 Phone: (503) 231–6847

Utah

Douglas Wood, Richfield District Office, 150 East 900 North, Richfield, UT 84701 Phone: (801) 896–8221

Wyoming

Clif Fanning, P.O. Box 1828, Cheyenne, WY 82003, Phone: 307 772–2080
Jim Melton, 1701 East "E" Street, Casper, WY 82601, Phone: (307) 261–5101

SUPPLEMENTAL INFORMATION: The proposed action and alternatives will incorporate a mix of vegetation treatment measures including biological, chemical, mechanical, and thermal methods to achieve the most cost effective and practical means of satisfying specific management objectives. Alternatives will include various combinations of the aforementioned treatments under four basic themes consisting of: the Proposed Action, No Action, No Aerial Application of Herbicides, and No Herbicide Use. The proposed action will represent an integrated pest management approach for the vegetation treatment program. The Environmental Consequences will depict reasonably foreseeable direct, indirect, and cumulative impacts of the Proposed Action and Alternatives. Impacts on the biological, physical, and social components of the human environment will be analyzed.

Date: July 11, 1988.

Hillary A. Oden,

State Director.

[FR Doc. 88–15961 Filed 7–14–88; 8:45 am]

BILLING CODE 4310-22-M

[OR-010-08-4410-12:GP8-185]

Extension of the Comment Period for the Warner Lakes Plan Amendment for Wetlands and Associated Uplands

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of comment period.

SUMMARY: The Bureau of Land Management (BLM) has extended the comment period for the Warner Lakes Plan Amendment for Wetlands and Associated Uplands as published in the **Federal Register** May 26, 1988.

DATE: Written comments on the plan must be submitted by September 2, 1988 to: District Manager, Lakeview District Office, P.O. Box 151, Lakeview, Oregon, 97630.

FOR FURTHER INFORMATION CONTACT: Renee Snyder, District Planning Coordinator, Bureau of Land Management, P.O. Box 151, Lakeview, Oregon 97630, (503) 947–2177.

Judy Nelson,

District Manager.

[FR Doc. 88–15922 Filed 7–14–88; 8:45 am]

BILLING CODE 4310-33-M

[AK-080-08-4333-02]

Designation of Off-Road Vehicle (ORV) Use Areas for the Steese National Conservation Area (Steese NCA)

This notice of designated ORV use area applies to all lands and water surfaces within the Steese National Conservation Area and the Pinnell Mountain National Recreational Trail, as shown on the Steese National Conservation Area Off-Road Vehicle Designations Map, and is subject to valid existing rights.

This order is issued pursuant to 43 CFR Subpart 8342 and in accordance with the authority and requirements of Executive Order 11644 and 11989 and implements provisions of the Steese NCA Resources Management Plan signed on February 2, 1986. This order will remain in effect until rescinded or modified by the District Manager, Steese/White Mountains District.

Definitions: The term "winter use" refers to the period of time between October 15 and April 30, inclusive. The term "summer use" refers to the remaining period of time between May 1 and October 14. The terms "gross vehicle weight" and "GVW" refer to the loaded weight of the vehicle, including gear, passengers, and fuel.

A. Limited ORV Use Designations

1. The foothills areas, as shown on the Steese National Conservation Area Off-Road Vehicle Designations Map, are open to use of ORVs that weight less than 1,500 pounds GVW. Subject to valid existing rights, the use of ORVs weighing over 1,500 pounds GVW in these areas is prohibited without written authorization from the District Manager, Steese/White Mountains District, except that written authorization is not required by this notice for use of ORVs on the Montana Creek Trail from the Steese NCA boundary along Bachelor Creek to its confluence with Preacher Creek; the Harrison Creek Trail along the North Fork of Harrison Creek to Harrison Creek, and downstream to Squaw Creek; and the Portage Creek Trail along Bottom Dollar Creek downstream to Harrison Creek. These trails are identified on the Steese National Conservation Area Off-Road Vehicle Designations Map.

2. The highlands areas, as shown on the Steese National Conservation Area Off-Road Vehicle Designations Map, are managed to protect the wild and natural character of the area. Subject to valid existing rights, these areas are open to winter use by snowmachines that weigh less than 1,500 pounds GVW. Any other ORV use in these areas is prohibited without written authorization from the District Manager, Steese/White Mountain District.

3. Birch Creek has been designated, and is managed as, a "wild" river pursuant to the Wild and Scenic Rivers Act (WSRA, Pub. L. 90–542). Subject to valid existing rights, the Birch Creek National Wild River corridor is open to winter use of snowmachines that weight less than 1,500 pounds GVW. Any other ORV use in this area is prohibited without written authorization from the District Manager, Steese/White Mountains District.

B. Closed to ORV Use Designation

1. There are two designated Research Natural Areas (RNAs), (Mount Prindle and the Big Windy Hot Springs) shown on the Steese National Conservation

Area Off-Road Vehicle Designations Map. Both areas are closed to all ORV use. These areas have been identified as having representative examples of ecosystems or unusual natural features that are of scientific interest for the Ecological Reserve System.

The foregoing provisions are not applicable to any Federal, state, or local law enforcement officer, or any member of any organized rescue or fire suppression force in the performance of an official duty.

Signs will be placed at major access points showing ORV use restrictions. Maps identifying these designated use areas are available at the office listed below. Operators of ORVs in violation of these designations are subject to the penalties prescribed in 43 CFR Subpart 8340.0–7.

Direct questions are responses to: Steese/White Mountains District Manager, Bureau of Land Management, 1541 Gaffney Road, Fairbanks Alaska 99703, (907) 356–5367.

Dated: June 27, 1988.

Donald E. Runberg,

District Manager, Steese/White Mountain District.

[FR Doc. 88–15406 Filed 7–14–88; 8:45 am]

BILLING CODE 4310-JA-M

[AK–080–08–4333–02]

Designation of Off-Road Vehicle (ORV) Use Areas for the White Mountains National Recreation Area (White Mountains NRA) and Associated Lands

This notice of designated ORV use areas applies to all lands and water surfaces within the White Mountains National Recreation Area and BLM-managed lands between the White Mountains NRA and the Steese and Elliottt Highways, as shown on the White Mountains National Recreation Area Off-Road Vehicle Designations Map, and is subject to valid existing rights.

This order is issued pursuant to 43 CFR Supart 8342 and in accordance with the authority and requirements of Executive Order 11644 and 11989, and implements provisions of the White Mountains NRA Resource Management Plan signed on February 2, 1986. This order will remain in effect until rescinded or modified by the District Manager, Steese/White Mountains District.

Definitions: The term "winter use" refers to the period of time between October 15 and April 30, inclusive. The term "summer use" refers to the remaining period of time between May 1 and October 14. The terms "gross vehicle weight" and "GVW" refer to the loaded weight of the vehicle, incuding gear, passengers, and fuel.

A. Limited ORV Use Designations

1. The foothills area, as shown on the White Mountains National Recreation Area Off-Road Vehicle Designations Map, is open to use of ORVs that weight less that 1,500 pounds GVW. Subject to valid existing rights, the use of ORV's weighting over 1,500 pounds GVW is prohibited for all other lands in this area without written authorization from the District Manager, Steese/White Mountains District. Written authorization is not required by this notice for use of ORVs that weight over 1,500 pounds GVW on the U.S. Creek Road and the mining tailings along Nome Creek.

2. The highlands area, as shown on the White Mountains National Recreation Area Off-Road Vehicle Designations Map, is managed to protect the wild and natural character of the area. Subject to valid existing rights, this area is open to winter use by snowmachines that weigh less than 1,500 pounds GVW. All ORV use is prohibited in the Windy Creek drainage, and the Fossil Creek drainage below the Windy Gap cabin, from April 15 to August 31, inclusive, in order to avoid disturbance to known peregrine falcon nesting areas. All other ORV use is prohibited without written authorization from the District Manager, Steese/White Mountains District.

3. Beaver Creek has been designated, and is managed as, a "wild" river pursuant to the Wild and Scenic Rivers Act (WSRA, Pub. L. 90–542). Except for the closures noted above for Windy Creek and Fossil Creek, and subject to valid existing rights, the Beaver Creek National Wild River corridor is open to winter use of snowmachines that weigh less than 1,500 pounds GVW. Any other ORV use is prohibited without written authorization from the District Manager, Steese/White Mountains District.

4. The White Mountains Summer Trail (specifically, the land within 12.5 feet of the centerline of the trail) is managed as a non-motorized recreation trail and is closed to all motorized vehicle use, exept that the trail is open to winter use by snowmachines that weigh less than 1,500 pounds GVW to the extent necessary to allow these snowmachines to cross the trail at right angles, more or less, incidental to accessing State or Federal lands otherwise open to such use.

B. Closed to ORV Use Designation

1. There are three designated Research Natural Areas (RNAs) shown on the White Mountains National Recreation Area Off-Road Vehicle Designations Map (Serpentine Slide, Limestone Jags, and Mount Prindle), which are closed to all ORV use. These have been identified as having representative examples of ecosystems or unusual natural features that are of scientific interest for the Ecological Reserve System.

The foregoing provisions are not applicable to any Federal, state, or local law enforcement officer, or any member of any organized rescue or fire suppression force in the performance of an official duty.

Signs will be placed at major access points showing ORV use restrictions. Maps identifying these designated use areas are available at the office listed below. Operators of ORVs in violation of these designations are subject to the penalties prescribed in 43 CFR Subpart 8340.0–7.

Direct questions and responses to: Steese/White Mountains District Manager, Bureau of Land Management, 1541 Gaffney Road, Fairbanks, Alaska 99703, (907) 356–5367.

Date: June 27, 1988.

Donald E. Runberg,

District Manager, Steese/White Mountains District.

[FR Doc. 88–15405 Filed 7–14–88; 8:45 am]

BILLING CODE 4310-JA-M

[NV–930–08–4212–11; N–48582]

Battle Mountain District; Tonopah Resource Area; NV

AGENCY: Bureau of Land Management, Department of The Interior.

ACTION: Realty action; classification of Federal lands for lease or sale for recreation and public purposes in Nye County, NV.

SUMMARY: In response to an application from the Beatty Water and Sanitation District for a sewage treatment plant site, the following described lands have been identified as suitable for lease or sale under the authority of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, *et seq.*):

Mount Diablo Meridian

T. 12 S., R. 47 E.,
Sec. 19, W½SE¼, SE¼SE¼;
Sec. 30, W½NW¼NE¼NE¼, E½NW¼NE¼, NE¼SW¼NE¼.

A parcel of land containing 155 acres.

These lands are not required for any Federal purpose. Disposal is consistent with the Bureau's planning for this area and would be in the public interest. No conflicts with State or local plans have

been identified. The grazing lessee will be given the two-year notification prescribed in Section 402(g) of the Federal Land Policy and Management Act of 1976.

The lands described in this notice meet the criteria for classification set forth in 43 CFR 2410.1–2 and 2430.4. They will not be offered for lease or sale until the classification becomes effective and all required environmental, archaeological, and mineral reports have been completed.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, in accordance with the Act of August 30, 1890 (43 U.S.C. 94).

2. All mineral deposits in the lands so patented and to the United States, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same under applicable law.

And would be subject to: 1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official land records at the time of patent issuance.

3. Any other reservations the Authorized Officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this Notice in the **Federal Register**, the above described public lands will be segregated from all forms of appropriation under the public land laws, including locations under the mining laws, except as to applications under the mineral leasing laws and applications under the Recreation and Public Purposes Act. The segregative effect will end upon issuance of patent or as specified in an opening order to be published in the **Federal Register**.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, P.O. Box 1420, Battle Mountain, NV 89820. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Date: June 29, 1988.

Terry L. Plummer,

District Manager, Battle Mountain, Nevada.

[FR Doc. 88–16011 Filed 7–14–88; 8:45 am]

BILLING CODE 4310-HC-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

DEPARTMENT OF ENERGY

Western Area Power Administration

Hoover Powerplant Modification, Boulder Canyon Project, Arizona/Nevada

AGENCIES: Bureau of Reclamation, Department of the Interior and Western Area Power Administration, Department of Energy.

ACTION: Notice of receipt of a proposal for the study of hydropower development on the Boulder Canyon Project, Arizona/Nevada; request for comments or additional proposals.

SUMMARY: Hoover Dam is an existing Bureau of Reclamation (Reclamation) structure which includes two existing powerhouses containing 17 main generating units.

By letter dated May 3, 1988, the Arizona Power Authority (APA) and the Colorado River Commission of Nevada (CRC) jointly submitted a proposal to Reclamation and the Western Area Power Administration (Western) wherein APA and CRC have proposed to study the feasibility of additional power development at Hoover Dam, and if feasible, finance the Hoover Powerplant Modification (Modification) for development by Reclamation, pursuant to the provisions of the Boulder Canyon Project Act of 1928 (43 U.S.C. 617, *et seq.*) (Act) and the Contributed Funds Act (43 U.S.C. 395). Reclamation and Western believe that any study must evaluate the capability of the existing transmission system to deliver the proposed additional capacity and determine any additions to the existing transmission system that may be required. Additional environmental studies could also be required.

The proposed Modification program would involve the construction of additional generating equipment at or near the existing powerhouses and would necessarily be integrated operationally and physically with the existing facilities.

All capacity from existing generating units (including uprating) and all energy that can be generated with the available water supply at Hoover Dam are fully allocated. The proposed Modification program would not increase the available energy from Hoover. However, the proposed Modification program would increase the generating capacity, which would allow APA and CRC to use their energy allocations in greater concentrations during times of peak demand.

Following the 30-day comment period, Reclamation and Western will evaluate the proposal, comments on the proposal, and any additional proposals, and determine what action is appropriate at that time.

DATES: Additional proposals or written comments concerning this Notice should be submitted on or before August 15, 1988.

ADDRESS: Additional proposals or written comments concerning this notice should be sent to: Mr. Benedict R. Radecki, Assistant Manager, Washington Liaison Office—Resource Management, Bureau of Reclamation, 18th and C Streets NW., Washington, DC 20240.

Availability of Information: Copies of the proposal may be obtained upon request from the contacts identified below.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Maestas, Acting Regional Supervisor of Power, Lower Colorado Region, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, (702) 293–8104, concerning power development matters; or Mr. Earl W. Hodge, Assistant Area Manager for Power Marketing, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, Nevada 89005, (702) 477–3255, concerning power marketing and transmission matters.

SUPPLEMENTARY INFORMATION: Reclamation completed a congressionally authorized feasibility study, "Hoover Power Plant Modification Feasibility Report," in December 1982, concluding that the proposed Modification program was feasible at that time. In December 1984, Reclamation also issued a Final Environmental Impact Statement on the proposed Modification program (Statement No. FES 84–48 dated December 27, 1984).

The proposed Modification program consists of two 250–MW generating units which would operate in parallel with generating units on an existing 25-foot diameter penstock and which would share the existing reservoir intake works with the remaining generating units.

Reclamation is responsible for planning, designing, constructing, operating, and maintaining electrical power generation facilities as authorized

by Congress. Reclamation is also responsible for allocating all costs for Reclamation project purposes and determining the reimbursable costs to be recovered by revenues. Western is responsible for marketing that power which is surplus to project needs, constructing transmission facilities, making transmission arrangements, assuring recovery of all costs assigned to power for repayment, and for setting power and transmission rates. Reclamation and Western will work together in the negotiation and execution of any contracts relating to the proposal.

In order for generating capacity made available by the proposed Modification program to be used and useful, a developer must have a contract with the Secretary of the Interior (Secretary) for the release of water through the Hoover Powerplant Modification program turbines. However, the Secretary is already and will continue to be contractually committed to the use of all available water releases for the exclusive beneficial use of the current Hoover contractors as specified in the Hoover Power Plant Act of 1984. Hence, any use of water by a Modification developer must be accomplished within the framework of those contracts, and absent a voluntary relinquishment of rights by an existing contractor, such use must be restricted to the situation where the Modification developer(s) and the existing contractor(s) are one and the same; i.e., capacity made available by the Modification program can only be contracted for by an existing Hoover contractor.

Section 5 of the Act further provides that preference to applicants for the use of water and appurtenant works and privileges for the generation and distribution of hydroelectric energy "shall be given first to a State for use in that State, and the States of Arizona, California, and Nevada shall be given equal opportunity as such applicants."

Date: July 11, 1988.

C. Dale Duvall,

Commissioner, Bureau of Reclamation.

Date: July 5, 1988.

William H. Clagett,

Administrator, Western Area Power Administration.

[FR Doc. 88-15946 Filed 7-14-88; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL JOINT COMMISSION—UNITED STATES AND CANADA

Public Hearings; a Request From Governments That the Commission Examine Into and Report Upon the Water Quality and Quantity Implications of a Proposed Mine Development on Cabin Creek in British Columbia

Notice is hearby given that the International Joint Commission will conduct public hearings on the report of the Flathead River International Study Board regarding the water quality and quantity implications of a proposed mine development on Cabin Creek in British Columbia. The Commission was requested by the Governments of Canada and the United States to examine and report on the present state of water quality and quantity at the border, the nature, location and significance of fisheries currently dependent on the waters of the Flathead River, and on the effects of the construction, operation and post-mine reclamation of the proposed Cabin Creek coal mine on current waters.

David A. LaRoche,

Secretary, United States Section.

July 8, 1988.

The public hearings will be held at the following times and locations:

September 20, 1988
2:00 p.m. and 7:30 p.m.
Cavanaugh's Motor Inn
Kalispell, Montana

September 21, 1988
2:00 p.m. and 7:30 p.m.
The Inn of the South
Cranbrook, British Columbia.

These public hearings will allow all interested parties to make presentations to the Commission. Any interested person or organization may address the hearing in either location, although the time allowed for presentation may be limited. Written submissions may also be sent to:

Secretary, Canadian Section, International Joint Commission, 100 Metcalfe Street, Ottawa, Ontario KIP 5MI, (613) 995-2984

Secretary, United States Section, International Joint Commission, 2001 "S" Street, NW., Washington, DC 20440, (202) 673-6222

Prior to the formal public hearings, the Flathead River International Study Board will conduct two public information meetings on its report to the Commission at Cranbrook, B.C. July 27, 7:30 p.m. at the Inn of the South, and Kalispell, Montana, July 28, 7:30 p.m. at the Outlaw Inn.

These meetings have been designed to allow members of the public to hear first hand from members of the Board about their findings and to obtain further information about the study. Copies of the Board's report will be available at the meetings and may be requested from the Commission Secretaries at the addresses above.

[FR Doc. 88-15920 Filed 7-14-88; 8:45 am]

BILLING CODE 4710-14-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

Date: July 12, 1988.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Land O'Lakes, Inc., 4001 Lexington Ave., No., Arden Hills, MN 55126.

(2) 4001 Lexington Ave., No., Arden Hills, MN 55126.

(3) Herb Sorvik, P.O. Box 116, Minneapolis, MN 55440.

Noreta R. McGee,

Secretary.

[FR Doc. 88-15956 Filed 7-14-88; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Applications To Consolidate, Merge or Acquire Control

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. If the protest includes a request for oral hearing, the request shall meet the requirements of 49 CFR 1182.3 and shall include the required certification. Failure seasonable to oppose will be construed as a waiver of opposition and participation in the proceeding.

In the absence of legally sufficient protests as to the finance application or to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Applicants must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application on a non-complying applicant shall stand denied.

Findings

The findings for these applications are set forth at 49 CFR 1182.6.

MC-F-19192, filed June 27, 1988. Allen Transportation Company Inc. (Allen) (1331 "C" St., Sacramento, CA 95852)—Purchase—Boise School Bus & Charter Service doing business as Sierra Trailways (Boise) (1109 Borah St., Boise, ID 83707). Representative: William D. Taylor, 333 Market St. #2277, San Francisco, CA 94105. Allen (MC-172280) seeks authority to purchase the authority held by Boise in Certificate No. MC-157603 (Sub-No. 2), authorizing the transportation of passengers and their baggage, over regular routes, between San Francisco, CA and Reno, NV over Interstate Hwy. 800, serving all intermediate points. Allen is controlled by A.B. Allen and R.E. Allen, who each own 50 percent of Allen's class A stock, and by William Allen, William Allen, Trustee, and Paula Del Carlo, who each own ⅓ of Allen's class B stock. Allen in turn controls 100 percent of the stock of Amador State Lines, Inc. (MC-82965).

Decided: July 8, 1988.

By the Commission, Motor Carrier Board, Members Grossman, Thomas, and Johnson. (Member Johnson not participating).

Noreta R. McGee,

Secretary.

[FR Doc. 88-15957 Filed 7-14-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Membership of the Senior Executive Service (SES) Performance Review Boards, 1988

AGENCY: Department of Justice.

ACTION: Notice of the Department of Justice's 1988 SES Performance Review Boards.

SUMMARY: Pursuant to the requirement of 5 U.S.C. 4314(c)(4), the Department of Justice announces the membership of its SES Performance Review Boards. The purposes of the Performance Review Boards are to provide fair and impartial review of Senior Executive Service performance appraisals and to make recommendations to the Deputy Attorney General regarding the ratings.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Oser, Director, Personnel Staff, Justice Management Division, Department of Justice, Washington, DC 20530. Telephone: (202) 633-3221.

Paul W. Mathwin,

Acting Executive Secretary, Senior Executive Resources Board.

Performance Review Boards

David J. Anderson, Director, Federal Programs Branch, Civil Division
James S. Angus, Chief, Employment Litigation Section, Civil Rights Division
Robert K. Bratt, Executive Officer, Civil Rights Division
Ronald A. Brooks, Assistant Commissioner for Inspections, Immigration and Naturalization Service
David T. Buente, Jr., Chief, Environmental Section, Land and Natural Resources Division
Benjamin F. Burrell, Director, Facilities and Administrative Services Staff, Justice Management Division
A.R. Cinquegrana, Deputy Counsel for Intelligence Policy, Office of Intelligence Policy and Review
Jonathan S. Cohen, Special Litigation Counsel, Tax Division
Richard L. DeHaan, Director, Office of Administration and Review, Executive Office for U.S. Attorneys
Robert L. Dennis, Assistant to the Director, Executive Office for Immigration Review
Vito J. DiPietro, Director, Commercial Litigation Branch, Civil Division
David K. Flynn, Chief, Appellate Section, Civil Rights Division
Donald J. Gavin, Chief, Office of Special Litigation, Tax Division
J. Patrick Glynn, Director, Torts Branch, Civil Division
Theodore S. Greenberg, Deputy Chief, Fraud Section, Criminal Division
Frank A. Guglielmo, Director, Computer Technology and Telecommunications Staff, Justice Management Division
William C. Hendricks III, Chief, Fraud Section, Criminal Division
Wade B. Houk, Assistant Director for Administration, Bureau of Prisons
I. Curtis Jernigan, Chief, Economic Regulatory Section, Antitrust Division
William J. Kollins, Chief, Land Acquisition Section, Land and Natural Resources Division
Douglas T. Lansing, Assistant Director for Human Resources Management, Bureau of Prisons
Robert E. Lindsay, Director, Office of Policy and Tax Enforcement, Tax Division
M. Miles Matthews, Assistant Director and Comptroller, U.S. Marshals Service
Anthony C. Moscato, Principal Deputy Assistant Attorney General, Justice Management Division
Warren Oser, Director, Personnel Staff, Justice Management Division
Thomas N. Perrelli, Comptroller, Immigration and Naturalization Service
James A. Puleo, Assistant Commissioner for Adjudication, Immigration and Naturalization Service
Benjamin H. Renshaw, Deputy Director, Bureau of Justice Statistics
Neil E. Roberts, Chief, Legal Policy Section, Antitrust Division
John R. Schroeder, Assistant Commissioner for Employment Cooperation, Immigration and Naturalization Service
Charles S. Stark, Chief, Foreign Commerce Section, Antitrust Division
Peter R. Steenland, Jr., Chief, Appellate Section, Land and Natural Resources Division
Dale Thomas, Deputy Assistant Director (UNICOR), Bureau of Prisons
Ronald J. Waldron, Deputy Assistant Director for Administration, Bureau of Prisons
Carol A. Williams, Special Counsel, Office of Legal Counsel

Philip M. Zeidner, Deputy Director, Executive Office for U.S. Trustees
Michael F. Zeldin, Deputy Chief, Narcotic and Dangerous Drug Section, Criminal Division

[FR Doc. 88-15953 Filed 7-14-88; 8:45 am]
BILLING CODE 4410-01-M

Drug Enforcement Administration

Cedars North Towers Pharmacy, Inc., d/b/a Cedars of Lebanon Apothecary; Revocation of Registration

On March 24, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Cedars North Towers Pharmacy, Inc., d/b/a Cedars of Lebanon Apothecary (Respondent), of Miami, Florida, proposing to revoke its DEA Certificate of Registration AC5854206, and to deny any pending applications for renewal. The statutory basis for the issuance of the Order to Show Cause was that the pharmacy's continued registration was inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4), based upon the following allegations: (1) An accountability audit of the pharmacy's controlled substance stock revealed excessive shortages and overages of most of the drugs audited; (2) the pharmacy handled controlled substances pursuant to an expired DEA Certificate of Registration; (3) the pharmacy failed to maintain controlled substance order forms and invoices in accordance with Federal laws and regulations; (4) the pharmacy failed to fill and maintain controlled substance prescriptions in accordance with Federal laws and regulations; (5) on numerous occasions, the pharmacy filled prescriptions for controlled substances which the pharmacist knew or should have known were not authorized by the physician alleged to have issued such prescriptions; and (6) on numerous occasions, the pharmacy refilled prescriptions for controlled substances which were not authorized by the issuing physician.

Through counsel, Respondent waived its opportunity for a hearing on the issues raised in the Order to Show Cause. Instead, Respondent filed a written statement in accordance with 21 CFR 1301.54(c). In the written statement, Respondent's counsel responded to the issues raised in the Order to Show Cause by stating that: (1) Any shortages or overages were the result of inadvertence and excusable neglect in minor recordkeeping mistakes, and were minor; that the audit did not take into consideration certain invoices and prescriptions which were misfiled; and that shortages were due to disposition of out of date substances and returns to manufacturers for credit; (2) with respect to the expired DEA Certificate of Registration, the owner was "under the mistaken impression that the certificate was not in effect and did not realize it had expired"; (3) all order forms were maintained; the owner was unaware that invoices which included controlled substances were required to be filed separately; (4) all prescriptions were filed substantially in accordance with Federal law and slight deviations were not inconsistent with the public interest; (5) all prescriptions filled by the pharmacy were authorized by physicians; and (6) all prescriptions refilled by the pharmacy were authorized by physicians. Respondent's counsel also averred that the violations would not be repeated, and requested that the Administration take alternative action short of revocation of the pharmacy's registration.

In making the final determination in this matter, the Administrator has carefully considered all of the evidence contained in the DEA investigative file and the written statement provided by Respondent's counsel.

The Administrator finds that on November 5, 1986, Diversion Investigators from the Miami Field Division visited Respondent pharmacy after receiving information from state investigators that the pharmacy was operating with an expired DEA Certificate of Registration. The Investigators discovered that Respondent's DEA registration expired on August 31, 1986, and had not been renewed as of the date of their visit to the pharmacy. Ira Stern is the sole owner of the pharmacy. DEA Diversion Investigators found that the pharmacy failed to maintain complete controlled substance records, controlled substance prescriptions were not readily retrievable, several controlled substance invoices were missing or incomplete, order forms were incomplete, and controlled substances were found scattered in various boxes and bags throughout the pharmacy's prescription area. Based upon Respondent's lack of authority to handle controlled substances at that time, on Novmeber 12, 1986, the Administrator ordered the seizure of all controlled substances in Repondent's possession. On November 17, 1986, Respondent was served with the a notice of inspection, and all controlled substances and controlled substance records were removed from the pharmacy.

In January 1987, Respondent's DEA Certificate of Registration was renewed inadvertently during the continued investigation of the pharmacy's controlled substance handling activities.

DEA Diversion Investigators conducted an accountability audit of Respondent's controlled substance stock for the period from July 21, 1985, to November 17, 1986. The audit revealed a total shortage of more than 8,000 dosage units of various controlled substances, with unexplained shortages of certain controlled substances as high as 86.4% and unexplained overages as high as 78.36%. In addition, the audit revealed that a significant number of the pharmacy's controlled substance invoices and one DEA order form did not include dates the drugs were received, nor the initials of the pharmacist who received the drugs, in violation of 21 U.S.C. 827(a)(3). Several of the controlled substance prescriptions bore no issuance date, physician's DEA registration number, address for the physician or patient address, or patient name, in violation of 21 U.S.C. 842(a)(5). Some prescriptions were refilled more than five times and some did not contain the pharmacist's initials on the refills, in violation of 21 U.S.C. 842(a)(5). In addition, several prescriptions were not readily retrievable in that they were mixed with other prescriptions for non-controlled drugs but were not stamped with the letter "C" to designate that they were controlled substance prescriptions, in violation of 21 U.S.C. 842(a)(5) and 21 CFR 1304.04(f)(2).

DEA Diversion Investigators also interviewed several physicians whose names were listed as prescribing physicians on a number of telephone prescriptions for controlled substances found at the pharmacy. Many of the physicians informed the Diversion Investigators that they did not authorize the telephone prescriptions for controlled substances which bore their names.

With respect to controlled substance prescriptions which were refilled at the pharmacy, several physicians interviewed indicated that they did not authorize the refills indicated on prescriptions bearing their names as the issuing physicians.

DEA Diversion Investigators also interviewed an individual listed as a patient on controlled prescriptions filled at the pharmacy; she stated that she was not a patient of the physician listed on the prescriptions, nor did she ever receive the controlled substances allegedly dispensed to her from the pharmacy.

The Administrator finds that Respondent pharmacy has not handled controlled substances with the care and restraint required of DEA registrants. It operated for several months without a valid DEA Certificate of Registration. The discrepancies in the pharmacy's recordkeeping disclosed during the controlled substances accountability audit were unjustified. The pharmacy never produced records to explain the excessive overages or shortages. It could not account for more than 8,000 dosage units of controlled substances. Many of the "telephone" prescriptions filled by the pharmacy were not legitimate or authorized by the listed physician, nor were many of the refills. In addition, the pharmacy failed to maintain proper controlled substance receiving records.

The explanations contained in Respondent's written statement do not mitigate or justify the pharmacy's improper and unlawful controlled substance activities. Ignorance of the law and regulations under which the pharmacy operates is inexcusable. Interviews conducted with physicians and patients demonstrate that Respondent's allegations that all prescriptions for controlled substances filled and refilled at the pharmacy were properly authorized are false.

Based upson the available information concerning Respondent's operation of the pharmacy, the Administrator concludes that its handling of controlled substances has been unacceptable and that it has not complied with Federal laws concerning controlled substances. The Administrator is not persuaded by Respondent's written statement that the public interest would be served by allowing Respondent to retain its controlled substance registration. Since Respondent pharmacy has not handled controlled substances in a responsible manner, the Administrator concludes that Respondent's continued registration is now inconsistent with the public interest and must be revoked.

Having concluded the Respondent's registration must be revoked, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders that DEA Certificate of Registration AC5854206, previously issued to Cedars North Towers Pharmacy, Inc., d/b/a Cedars of Lebanon Apothecary, be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said registration or for a new registration be, and they hereby are denied.

This order is effective August 15, 1988.

Dated: July 7, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-15968 Filed 7-14-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-1]

Lewis K. Curtwright, D.O.; Revocation of Registration

On December 4, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Lewis K. Curtwright, D.O. (Respondent), of Milford, Ohio, proposing to revoke his DEA Certificate of Registration BC0306399, and to deny any pending applications for renewal of his registration. The grounds for the proposed action cited in the Order to Show Cause were that Respondent was not currently authorized to handle controlled substances in the state in which he maintained his DEA Certificate of Registration and that based upon numerous controlled substance violations, his continued registration was inconsistent with the public interest.

Through counsel, Respondent requested a hearing on the issues raised in the Order to Show Cause and the matter was placed on the docket of Administrative Law Judge Francis L. Young.

Both parties filed prehearing statements and a prehearing conference was held by Judge Young on September 4, 1987. On September 9, 1988, Judge Young issued a prehearing ruling which outlined the issues, stipulations, witnesses and their expected testimony, documentary evidence to be introduced, and the date and location for the pending hearing. The hearing was scheduled to be held in Washington, DC on December 3, 1987. In his prehearing ruling, Judge Young also ordered Respondent's counsel to provide the Government with an expanded summary of Respondent's expected testimony and copies of witness affidavits by November 4, 1987. Respondent's counsel failed to provide the required information by that date and Government counsel filed a motion requesting that the Administative Law Judge strike portions of Respondent's prehearing statement or, in the alternative, postpone the hearing and order Respondent's counsel to comply with the earlier ruling. By memorandum to counsel dated November 25, 1987, Judge Young deferred ruling on the Government's motion until the scheduled hearing.

On December 1, 1987, Government counsel received correspondence from Respondent in which he requested information on the status of the action against his registration and claimed that his attorney had not informed him of the pending hearing. The Administrative Law Judge, having been advised about Respondent's letter, convened a telephone conference with counsel from both sides to discuss the allegations in Respondent's letter and to determine whether a postponement of hearing might be appropriate. Respondent's counsel provided documentation that he had informed Respondent of the scheduled hearing date, had sent him a copy of the prehearing ruling, and had also requested Respondent's assistance in preparing his summary of testimony and witness affidavits. Respondent did not respond to any of his counsel's requests.

Based upon the fact that Respondent had been fully informed of the scheduled hearing, Government counsel requested that the hearing be held on December 3, 1987, as previously scheduled. The hearing was so held. Neither Respondent nor his attorney appeared at the hearing. The Government offered the testimony of one witness and introduced a total of 17 documents. No evidence was introduced on behalf of Respondent.

Since Respondent failed to appear at the hearing, he is deemed to have waived his opportunity for a hearing. 21 CFR 1301.54(d). Accordingly, on February 14, 1988, the Administrative Law Judge terminated the proceedings before him and the matter was submitted to the Administrator for a final determination.

The Administrator has reviewed all of the evidence in this matter, including the testimony and documentary evidence presented at the hearing and the information contained in the investigative file. After careful consideration, the Administrator determines that Respondent's registration should be revoked and that any pending applications for renewal should be denied.

The Administrator finds that on January 19, February 2, and March 8, 1984, Respondent appeared before the Ohio State Medical Board to answer to several allegations that he had improperly handled controlled substances. On August 8, 1984, the Board issued an order suspending Respondent's license to practice medicine in that state for a period of eighteen months, effective September 15, 1984. All but 30 days of the suspension were stayed conditioned upon his

compliance with other provisions of the order, including: (1) Appearing before the Board on a quarterly basis during the suspension; (2) spending four weeks at a drug treatment facility, as an observer; (3) surrendering his DEA Certificate of Registration for a period of six months; and (4) maintaining a log of all controlled substances prescribed during the suspension period. The Board action against Respondent was based upon findings that he inappropriately prescribed controlled substances to at least four patients, treated a number of patients with addictive controlled substances for an excessive period of time, and treated a number of patients with excessive amounts of addictive controlled substances. The Board concluded that Respondent's actions constituted "failure to use reasonable care [and] discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," "selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes," and "a departure from, or failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances." After reviewing the transcript of the 1984 Ohio State Medical Board proceeding, the Administrator reaches essentially the same conclusions as did the Board.

The record indicates that on September 15, 1984, Respondent surrendered his DEA Certificate of Registration in compliance with the earlier board order. During the period from September 15, 1984, to February 25, 1986, Respondent did not possess a valid DEA Certificate of Registration. On February 25, 1986, Respondent was issued a new DEA Certificate of Registration shortly after submitting a new application.

On June 12 and August 15, 1985, Respondent again appeared before the Ohio State Medical Board to answer allegations that he violated the Board's 1984 order prohibiting him from handling controlled substances for the six-month period from September 15, 1984, to March 15, 1985, by issuing at least eight controlled substance prescriptions during the months of October, November and December 1984. The Board determined that Respondent violated its earlier order by writing eight prescriptions for Restoril, Fiorinal and Tenuate at a time when he was not authorized to do so. On March 12, 1986, the Board issued an order reimposing the eighteen-month suspension of Respondent's medical license, to take effect on May 1, 1986.

The Administrator finds that, in addition to violating the Board's earlier order, Respondent also unlawfully issued controlled substance prescriptions during that time since he did not possess a valid DEA Certificate of Registration when he issued the prescriptions. The DEA administrative record also includes additional controlled substance prescriptions issued by Respondent in October 1985 and January 1986, also at a time he did not possess a valid DEA Certificate of Registration.

The Administrator finds that Respondent appealed the Board's 1986 decision suspending his medical license. On December 31, 1986, the Ohio Court of Appeals for the Twelfth Appellate District, Clermont County reversed the Board's actions on the ground that the 1984 order was ambiguous and contradictory with respect to Respondent's ability to handle controlled substances during the suspension period, in that although the Board ordered Respondent to surrender his DEA Certificate of Registration, it also required him to maintain a log of controlled substances he prescribed. The court did not question the validity of the Board's 1984 findings and conclusions regarding Respondent's record of improperly handling controlled substances. Based upon the court's reversal of the Board orders, Respondent's Ohio state medical license was restored.

On October 16, 1986, Respondent executed an application for renewal of his DEA Certificate of Registration listing 220 N. Lincoln Street, Daytona Beach, Florida as his registered address. On August 7, 1987, Respondent also executed a new application for registration with the Drug Enforcement Administration listing P.O. Box 555669, Orlando, Florida as his registered address. Both applications are before the Administrator in this proceeding. Although Respondent is currently registered with the Drug Enforcement Administration to handle controlled substances in the State of Ohio, he is not so registered in the State of Florida.

The Administrator finds, based upon the evidence previously discussed, that Respondent improperly handled controlled substances by treating patients with controlled substances when their symptoms did not support such treatment and by treating patients with controlled substances for excessive periods of time and in excessive quantities. In addition, Respondent issued several prescriptions for controlled substances at a time when he did not possess a valid DEA Certificate of Registration. These violations demonstrate that Respondent does not handle controlled substances with the care and restraint required of registrants, and also that he has demonstrated a disregard for the laws and regulations under which he is registered. Such behavior is inconsistent with the public interest and cannot be tolerated. Therefore, the Administrator concludes that Respondent's continued registration is inconsistent with the public interest and that his DEA Certificate of Registration must be revoked.

Having concluded that Respondent's registration must be revoked, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders that DEA Certificate of Registration BC0306399, previously issued to Lewis K. Curtwright, D.O., be, and it hereby is, revoked. It is further ordered that Respondent's pending applications for registration, executed on October 16, 1986, and August 7, 1987, be, and they hereby are, denied.

This order is effective August 15, 1988.

Dated: July 8, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-15969 Filed 7-14-88; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration; Smithkline and French Laboratories

By Notice dated May 11, 1988, and published in the **Federal Register** on May 19, 1988; (53 FR 17988), Smithkline and French Laboratories, Division of Smithkline Beckman Corporation, 1530 Spring Garden Street, Philadelphia, Pennsylvania 19101, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of amphetamine, its salts, optical isomers and salts of its optical isomers (1100), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: July 5, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-15970 Filed 7-14-88; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration; Smithkline Chemicals

By Notice dated May 11, 1988, and published in the **Federal Register** on May 19, 1988; (53 FR 17989), Smithkline Chemicals, Division of Smithkline Beckman Corporation, 900 River Road, Conshohocken, Pennsylvania 19428, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

	Schedule
Drug:	
4-methoxyamphetamine (7411)	I
Amphetamine, its salts, optical isomers and salts of its optical isomers (1100).	II
Phenylacetone (8501)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: July 5, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-15971 Filed 7-14-88; 8:45 am]

BILLING CODE 4410-09-M

Docket No. 87-57]

Wyeth Hardy Worley, D.D.S.; Revocation of Registration

On June 24, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Wyeth Hardy Worley D.D.S. (Respondent) of Bossier City, Louisiana proposing to revoke his DEA Certificate of Registration AW338660, and deny any pending applications for renewal of that registration. The statutory predicate for the Order to Show Cause was that Respondent's continued registration with DEA was inconsistent with the public interest as evidenced by (1) his failure to maintain inventory and dispensing records of controlled substances, (2) his failure to maintain all DEA order forms, (3) his excessive purchases of controlled substances, including Desoxyn, a stimulant drug not dispensed by dentists in legitimate practice, and (4) his personal abuse of controlled substances.

Respondent, through counsel, requested a hearing by letter dated July 16, 1987. The matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing filings, a hearing was held in New Orleans, Louisiana on November 17, 1987. Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision on March 25, 1988. Respondent filed his proposed findings of fact, conclusions of law and argument on April 7, 1988, approximately a month after the due date for filing. On April 22, 1988, Respondent filed a document in the nature of exceptions entitled Memorandum in Opposition to Findings of Fact and Conclusion of Law and Decision of Administrative Law Judge. On May 10, 1988, Respondent filed another document which was entitled Respondent's Exceptions to Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge. Government counsel filed a response to Respondent's exceptions on May 16, 1988.

On May 24, 1988, the Administrative Law Judge transmitted the record in this matter to the Administrator. In the letter of transmittal, the Administrative Law Judge advised the Administrator that he had reconsidered his opinion in light of Respondent's proposed findings of fact, conclusions of law and argument, and concluded that no changes in his opinion or recommendation were necessary. The Administrative Law Judge also informed the Administrator that Respondent had attached various documents to his post-hearing filings which were in the nature of evidentiary material. Since this material was proffered after the time for submitting such evidentiary documents had passed, the Administrative Law Judge did not consider those documents. The Administrator, having considered the record in its entirety, hereby enters his final order in this matter pursuant to 21 CFR 1316.67.

The Administrative Law Judge found that Respondent had a 20-year history of controlled substance abuse, which included abuse of Desoxyn and Dilaudid. Respondent ordered large quantitites of controlled substances for office use in 1984, 1985, and 1986. In 1985 Respondent was investigated by the Louisiana State Police because of his unusually large purchases of Schedule II controlled substances, including Desoxyn, a stimulant drug containing methamphetamine. This is not a drug used by dentists in legitimate dental practice. The Lousiana State Police referred their investigative findings to the Vice-President of the Louisiana State Board of Dentistry. The Vice-President of the dental board told Respondent to cease dispensing Desoxyn and write prescriptions for his patients if necessary. Respondent continued to purchase large quantities of Desoxyn.

In January 1987, DEA Diversion Investigators went to Respondent's Office to inspect his records and stocks of controlled substances. Respondent told investigators he had no inventory or dispensing records. He also told the investigators that he intended to take all the controlled substances on hand with him to Mexico the following day for use in his work with the Indians. Respondent indicated that he transported controlled substances to Mexico on many occasions in order to treat the Indians, and had no records of the controlled substances he took out of the country. Respondent was not registered by DEA as an exporter nor did he file any of the required declarations or permits prior to exporting controlled substances.

The Administrative Law Judge further found that Respondent ws addicted to Dilaudid and Desoxyn and was admitted to a treatment program, of his own volition, in February 1987. Respondent left this program against medical advice and was admitted to another program in Louisiana. He successfully completed 90 days of intensive treatment. As of the date of the hearing, Respondent was following the course of his aftercare monitoring program.

The Administrative Law Judge concluded that Respondent failed to meet his burden of showing that he could be trusted with a DEA Registration. Respondent's period of recovery had been less than a year at the time of the hearing. This is in contrast to a 20 year history of controlled substances abuse. In addition, the Administrative Law Judge noted that Respondent's explanation of the extent of his drug use did not account for the very large quantities of Desoxyn he purchased. Since this drug has no legitimate use in dentistry, such

large purchases lead to the conclusion that the Desoxyn which was not for Respondent's own abuse was used for some illicit purpose. The Administrative Law Judge recommended that Respondent's registrations be revoked, and that any pending renewal applications be denied.

Respondent filed two documents in the nature of exceptions to the opinion and recommended ruling of the Administrative Law Judge. Responsent argues that he has entered into a consent agreement with the Louisiana State Board of Dentistry regarding his state dental license. This consent agreement was apparently entered into following the hearing, and there is no evidence in the record regarding its existence. Respondent further argues that his conduct was not criminal, and that there is no evidence to support a contention that he disposed of controlled substances in a criminal manner. He also argues that all his problems arose because of his drug abuse problem. Respondent violated the law in may respects. He obtained controlled substances fraudulently, he exported controlled substances without being registered or filing required documents, and he failed to maintain required controlled substances dispensing records. These violations do not lose their significance because criminal charges were not filed against Respondent.

The Administrator adopts the opinion and recommended decision of the Administrative Law Judge in its entirety. The Administrator concludes that Respondent's long history of personal drug abuse in contrast to a short period of rehabilitation and his failure to maintain records and to properly handle controlled substances in his practice require the DEA registration to be revoked as inconsistent with the public interest.

Accordingly, the Administrator of the DEA, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AW337660, previously issued to Wyeth Hardy Worley, D.D.S., be, and it hereby is, revoked. Any pending applications for renewal of that registration are hereby denied. This order is effective August 15, 1988.

Dated: July 7, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-15972 Filed 7-14-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Research, Evaluation, and Pilot and Demonstration Projects Program; Program Year 1988: Availability of Funds and Request for Applications

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and of Solicitation for Grant Applications.

SUMMARY: The Employment and Training Administration announces the availability of funds under the Job Training Partnership Act for providing technical assistance to States that replicate the Summer Traning and Education Program (STEP) model starting with the summer of 1989.

DATES: The closing for receipt of applications under this announcement is August 29, 1988.

To be considered, an application must be received no later than 4:45 (Eastern Daylight Time) at the address below, on August 29, 1988. Any application not reaching the designated place and date of delivery will not be considered.

To receive consideration, applications submitted by mail must be postmarked no later than August 24, 1988. The term "postmark" means a printed, stamped or otherwise placed impression (exclusive of postage meter machine impression) that is readily identifiable without further action as having been supplied or affixed on the date of mailing by employees of the U.S. Postal Service.

ADDRESS: Mail or hand-deliver applications to: Division of Acquisition and Assistance, Office of Financial and Administrative Management, Employment and Training Administration, U.S. Department of Labor, Room C-4305, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Brenda Banks, Reference: *SGA-DAA 104-88.*

FOR FURTHER INFORMATION CONTACT: Brenda Banks, Division of Acquisition and Assistance, Telephone: (202) 535-8702.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) announces the availability of funds under the Job Training Partnership Act (JTPA) for providing technical assistance to States and service delivery areas (SDAs) that replicate the Summer Training and Education Program (STEP) model, starting with the summer of 1989. The Department of Labor (Department) plans to replicate this model in ten States, with approximately five SDAs per State.

STEP is a combined education and work experience program aimed toward reducing dropout and teenage pregnancy rates among disadvantaged and educationally deficient youth. Early results of a STEP demonstration suggest that widespread implementation of this program will help achieve the Department of Labor's (Department's) goals of increasing literacy and employability of disadvantaged youth.

One (1) grantee will be chosen to facilitate the replication of STEP in the States by assisting in the selection of States, guiding the implementation of STEP, and providing technical assistance and training to States and SDAs druing implementation and program operation.

Grantee selection will be based primarily on demonstration of an understanding of the key features of the STEP model, the technical assistance States and local staff will need to implement it, and the timeframe needed to mount the various activities; and experience in providing technical assistance to State and local staff who are mounting new program designs.

The Department anticipates making an award of approximately $600,000. This award, together with local matching funds, should support technical assistance through the approximately nine months of State and local planning and 15 months of program operation beginning in summer 1989. Pending availability of funds and adequate grantee performance, a grant may be awarded for additional States beginning program operation in summer 1990.

This project announcement consists of three parts. Part I provides background information on the STEP model. It describes the model and gives the history of the demonstration project, the Department's involvement in it, and the early research results on its effectiveness. Part II describes the technical assistance needed to mount the replication. Part III provides guidance on how to prepare and submit an application.

Eligible Applicants

Proposals will be accepted from all applicants who can provide the services outlined in this solicitation. Any grant awarded as a result of this notice will be non-fee bearing.

Part I—Background

A. The Summer Training and Education Program (STEP) Model

The Summer Training and Education Program (STEP) targets youth who are 14 and 15 years old, doing poorly in school and eligible for the federally-funded Summer Youth Employment and Training Program established pursuant to Title II–B of the Job Training Partnership Act (JTPA).

Participants are enrolled in the program for approximately 15 months, including two consecutive summers and the intervening school year. During the first summer, STEP participants receive remedial instruction in reading and math, work part-time, and attend life planning sessions. They are offered school-year support and guaranteed a second summer of work study if they successfully complete the first summer, stay in school, and otherwise remain eligible for the program. The program, thus, has four basic components: Basic skills remediation, a life-planning curriculum, work experience, and a school-year support program.

Remediation

STEP's educational component attempts to overcome deficiencies in basic skills and the weak student's lack of self-confidence and sense of control over the learning process.

The STEP approach has several key features:

(a) A concentration on reading and math;

(a) Competency-based instruction (five competency areas in reading and nine in math);

(c) Individually-paced learning tailored to the needs of 14–16 year olds who are behind in school and often grade retained;

(d) A minimum of 90 hours of summer instruction with 20 to 25 per cent of time devoted to computer-assisted instruction and 20 minutes of daily silent, sustained reading;

(e) Remediation sessions not exceeding three hours daily (excluding breaks);

(f) A curriculum including teacher-led group instruction, student-paced skill reinforcement exercises, opportunities for supplementary projects, and independent reading and writing assignments; and

(g) A teacher-student ratio of at least 1:15.

A curriculum containing week-long learning modules (called "Practical Academics") has been developed for STEP. Curricula, however, may be locally developed as long as all of STEP's key features are included.

Life Planning Curriculum

STEP includes an educational program, called "Life Skills and Opportunities" (LSO), that focuses on teen decisions about preparing for the world of work and dealing with sexual and reproductive development, feelings and behaviors. It is designed to motivate youth to delay parenthood until they achieve their educational and career goals. The curriculum emphasizes the serious economic, health, and social risks of early and unprotected sexual activity. Abstinence is advocated throughout the curriculum; however, because a substantial proportion of participants reported sexual activity prior to entering STEP, information on contraception is also provided. Participants are required to have signed parental consent forms to receive this instruction.

The curriculum consists of twelve 90-minute segments, for a total of 18 hours. It uses role-playing, games, films, discussions and small group interactions to challenge and motivate participants. Among the topics covered are:

(a) Handling the pressures of dating relationships, understanding sexual feelings and managing them responsibly;

(b) The personal and financial responsibilities and costs of parenthood;

(c) Key facts about sexuality, including anatomy, contraception and sexually transmitted diseases;

(d) Appropriate work attitudes and behavior;

(e) How to set career goals and plan for the future;

(f) Maintaining good health; and

(g) The risks of substance abuse.

Work Experience

Through linkages with programs operated under Title II–B of JTPA, STEP participants secure parttime summer jobs. Participants work for at least 80 hours. Their jobs include, for example, positions as custodial or maintenance aides, recreation aides, clerical helpers and day care aides. In placing youth in jobs, the program matches the interests of the youth to the extent possible.

School-Year Support Program

The objectives of the school-year support component are: (1) To encourage STEP participants to stay in school and build upon their achievements of the summer; (2) to provide a means of keeping track of participants and re-enrolling them in the second summer; and (3) to link participants with tutorial, health, counseling, and other support services. To achieve these objectives, a coordinator plans activities for participants throughout the school year. These activities include:

(a) Quarterly meetings of STEP participants in groups of 20–25;

(b) Monthly or bi-monthly one-to-one contacts with a mentor or counselor; and

(c) An early fall meeting with parents to brief them on the summer experience and plans for school-year activities, and to encourage their help in planning school-year activities.

Quarterly sessions are intended to build "esprit de corps" among participants through such activities as field trips, workshops, outside speakers, films, or "rap" sessions.

Field trips may include sporting or cultural events or visits to local business or industry. Workshops, speakers, and films may focus on issues related to life planning, career development or increasing self-esteem.

Mentor contacts may be either a half-hour meeting, a letter or telephone call. The counselor/mentor may be a counselor on the school staff, a work-study intern, a high-school senior who could serve as a role model, or a counselor with a community agency. He or she will check on the youth's school attendence and performance and will help make connections with whatever other social services or resources the youth may require to stay in school.

The STEP model, based on remediation, a life planning curriculum, work experience, and school-year support, is sufficiently flexible to accommodate local variation. It can be operated in one or several neighborhoods or in an area as large as a county. Remediation and work experience can occur at the same site (e.g., on the campus of a high school or community college), or remediation can occur at a central location, with worksites located elsewhere. In the latter case, students travel between the remediation and worksites at mid-day.

B. The History of STEP

Public/Private Ventures (P/PV), Philadelphia, PA, developed the STEP model along with a randomized experimental design to test its effectiveness. In 1984, STEP was pilot-tested in three sites in Boston, MA, and Pinellas County , FL. When early results were encouraging, P/PV mounted a demonstration in five sites. The sites, selected because of their capacity to undertake the project successfully, included Boston, MA, Fresno, CA, Portland, OR, San Diego, CA, and Seattle, WA. The demonstration now includes three cohorts—those enrolled in the summers of 1985, 1986, and 1987—

with the third cohort completing its second summer in 1988.

The demonstration's research design required 300 youth per site in the experimental program, and another 300 in a control group whose members were placed in full-time summer jobs with no school year support program. This design also calls for a five-year follow-up of demonstration participants to examine STEP's short- and long-term effects on development of responsible social and sexual attitudes and behavior, reduction of adolescent parenthood, school retention and high school graduation, military service and early labor force experience. The follow-up of all three cohorts is on-going and will not be complete until 1993.

Now that the operational Phase of the demonstration is nearly complete and research results continue to be encouraging, many other States and local areas are interested in replicating the STEP model. In 1988, four new States are replicating the STEP model, each in three to five SDAs.

P/PV is currently giving technical assistance to States replicating the STEP model. P/PV staff help the State plan and implement the STEP model, including selecting sites, training State, regional and local officials, providing curricula, and training staff to conduct STEP's remedial education and LSO curricula and to carry out other STEP components.

The development of the STEP model and research demonstration of its effectiveness has been funded by a number of private foundations, including the Edna McConnell Clark, William and Flora Hewlett, Ahmanson, Aetna Life and Casualty, and J.C. Penney Foundations; and the Lilly Endowment. Early in 1986, the Department, and later the Department of Health and Human Services, joined in supporting the demonstration during its operational phase. In two of the four States that are replicating the STEP model in summer 1988, the Department has helped fund P/PV's technical assistance.

C. Research Results of the Demonstration

In the absence of a summer program, youth who are behind in school typically experience losses in their reading and math achievement. Summer reading losses of the STEP demonstration's control group are the equivalent of about one grade level. After the STEP remediation curricula, the treatment group achieves significantly more than the control group, however, the former still experiences reading losses. Thus, STEP "gains" must be viewed as stemmed reading losses.

In the absence of remediation, summer losses in math achievement are not as large as in reading. Because of this, the STEP treatment group often gains math achievement over the summer. However, these gains, measured against the earlier end-of-the-school-year peak, are small.

The STEP remediation has produced the following "gains" (i.e., stemmed losses) of the treatment group over the control group:

- .3 or .4 of a grade equivalent in both reading and math for the first cohort's first summer when some sites were late in planning the program and remediation curricula were developed locally and often hastily; and
- .7 of a grade equivalent in both reading and math for the second cohort's first summer when sites were more experienced in implementing the STEP model and curricula were provided.

Preliminary results with the demonstration's third cohort are in approximately the same range as results with the second cohort.

The demonstration did not include a control group to measure achievement differences between treatment and control groups in the second summer, except in one site. These results suggest that the second summer of remediation also appears to stem reading and math losses. In addition, the treatment group appeared to have had larger school year gains.

The LSO curricular produced a strong effect on STEP participants' knowledge about birth control.

The five-year post-program follow-up will monitor pregnancy rates to see whether contraceptive knowledge, or other aspects of the LSO curricular, affect behavior. It will also examine STEP effects on school attendance, standardized test scores, credits earned, grade promotion and dropout behavior.

Part II—Technical Assistance for the Replication of STEP

The Department plans to replicate the STEP model in 10 States, with approximately 50 SDAs. To facilitate this replication, it is soliciting, by this notice, technical assistance from a grantee. The grantee awarded this grant will have responsibility for identifying States interested in replicating STEP and soliciting their matching funds for technical assistance, guiding the implementation of STEP, ensuring that the integrity of the STEP model is maintained, and providing technical assistance and training to States and SDAs during the planning stages as well as during the entire 15-month period of STEP operation. The grantee will also consult with any other technical assistance providers that are involved in implementing STEP replications. The technical assistance should prepare State and local staff to implement STEP in other sites within the State without further aid.

Replication must include the four components of the STEP model—summer remediation, the LSO curriculum, part-time summer work experience and school-year support. The basic education component need not use the "Practical Academics" curricula developed by P/PV, but must have all the key features of their remedial program.

The technical assistance should offer:

- Strategies for successful planning and management of the implementation of the STEP model and each of its four components;
- Means of developing a close collaboration among private industry councils, school districts and employment and training agencies;
- Methods of identifying the target population and strategies for outreach, recruitment, and re-enrollment of participants in the second summer;
- Guidelines for sites to use in selecting high quality teachers whose teaching philosophy is consistent with the method of the STEP model;
- Approaches for intergrating computer assisted instruction into the remediation component;
- Strategies for securing part-time jobs; and
- Guidance for the in-school support program.

Training sessions could use written materials already developed by P/PV: a STEP operations manual, a special brochure on STEP, the remediation curricula ("Practical Academics") and the LSO curricula (all materials will be available for review during regular business hours at the ETA Division of Acquisition and Assistance, Room C-4305, 200 Constitution Ave., NW., Washington, DC 20210). The grantee would take responsibility for preparing any other necessary materials.

All activities must be timely for the implementation of the program for summer 1989. Technical assistance activities for regional, State and local officials and staff include:

- Consulting with the Department to identify a list of 12–20 States and contacting and visiting these States to determine their interest in replicating STEP in several SDAs for the summer of 1989; prior to the award of this grant, the Department will distribute a Field Memorandum to all Regional Administrators with an attached letter

to all State JTPA Liaisons soliciting interest from the States in replicating the STEP model. A list of approximately 25 States will be developed.

- For each of 10 States selected, assisting State staff, as requested, in determining the SDAs which will implement STEP;
- Briefing key State and local officials on the STEP program and on the process, logistics and personnel required for training local staff;
- Holding training sessions in each of the selected States in which appropriate federal, State, and local officials and staff are included;
- Working with the selected local jurisdictions to make the STEP model operational in the summer of 1989; and, in particular, assisting them in developing: (a) The coordination between educational and employment and training sectors to structure a day that contains both work and education, and (b) the part-time summer job slots;
- Conducting training on the remedial education and LSO curricula at central locations in each of the participating States;
- Inviting other individuals designated by the Department as interested in briefings or training sessions regardless of their jurisdictions;
- Providing on-going assistance to those States and SDAs operating the full STEP model during the 1989 summer, and, in particular, working with State staff so that they can assist and monitor the replication of STEP in future sites;
- Working with States and SDAs during the school year to ensure that the school-year support component is adequately implemented;
- Serving as a clearinghouse for the exchange of experiences that enrich and improve the school-year support component and its implementation; and
- Conducting follow-up training sessions for the sites prior to the implementation of the second summer.

Other national technical assistance providers may be involved in implementing components of STEP. The grantee will arrange technical assistance activities for them as well. Technical assistance activities for national technical assistance providers include:

- Organizing and delivering a one-day training session with an overview of STEP and an exchange of expertise and advice regarding the STEP model's written materials, training approach and content;
- Inviting national technical assistance providers and their staff to attend training sessions;
- Being available for assistance and consultation to national technical assistance providers who provide ongoing assistance to sites; and
- Preparing national technical assistance providers to service new jurisdictions without further assistance, while maintaining the integrity of the STEP model.

Support for these activities is estimated at $60,000 per State or approximately $600,000.

Part III—Application Process

An original and four copies of the grant application shall be submitted. The application package shall consist of two separate and distinct parts. Part I shall contain a fact sheet and the budget. Part II shall contain a technical proposal that demonstrates the offerer's capabilities. No cost data or reference to price shall be included in the technical proposal.

The fact sheet shall include the following:

- The name of the institution or organization submitting the proposal (the offerer);
- The address of the offerer, including the zip code;
- The telephone number, including area code, of the offerer; and
- The name, position, phone number, and signature of the offerer's official who is approving the submission of the proposal. This person shall be someone with legal authority to commit the offerer to the proposed project.
- The telephone number, including area code, of the offerer; and
- The name, position, phone number, and signature of the offerer's official who is approving the submission of the proposal. This person shall be someone with legal authority to commit the offerer to the proposed project.

Budget information shall follow the format specified below in the attachment, Appendix A.

Criteria used to evaluate the proposal are given below. Deliverables are listed after the evaluation criteria.

A. Evaluation Criteria

The Department's reviewers will score the applications, basing their scoring decision on the following criteria:

(a) Offerer's understanding (40 points), as demonstated by the proposal, of the key features of the STEP model, the technical assistance States and local staff will need to implement it, and the timeframe needed to mount the various activities.

(b) Experience of the firm (20 points) in providing technical assistance to State and/or local staff who are mounting new program designs. The offerer's position would be enhanced by experience with JTPA and experience in providing technical assistance to implement diseadvantaged youth programs; multi-component programs; programs requiring partnerships between school districts, employment and training agencies, and/or JTPA Private Industry Councils; or programs featuring competency-based training, computer-assisted instruction or other aspects of STEP.

(c) Experience of key staff (20 points) in providing technical assistance to State and/or local staff who are mounting new program designs. As above, the offerer's position would be enhanced by key staff with knowledge of JTPA and experience in providing technical assistance to implement disadvantaged youth programs; multi-component programs; programs requiring partnerships between school districts, employment and training agencies, and/or JTPA Private Industry Councils; or programs featuring competency-based training, computer-assisted instruction or other aspects of STEP.

(d) Effective written communication (10 points). The proposal and any appendices or attachments should demonstrate the ability to clearly state concepts, extract critical aspects, translate technical information for the uninitiated, and give effective presentations to user groups with varying needs.

(e) Level of effort (10 points). The proposal should specify the resources that will be dedicated to the technical assistance effort, including personnel, time, facilities, and planned number of training sessions. These resources should be adequate for the work described in the application. The staff should be qualified and should have the required skills and abilities. The staffing pattern must clearly link responsibilities to project tasks. The proposal must identify any collaborative effort with other agencies or organizations.

Applicants are advised that discussions may be necessary in order to clarify any inconsistencies in their applications. The reviewers' evaluations are only advisory to the Grant Officer. The final decision to award the grant will be made by the ETA Grant Officer, after considering the reviewers' scoring decisions. The ETA Grant Officer's decision will be based on the Grant Officer's determination of what is most advantageous to the Federal Government in terms of technical quality and other factors.

B. Reporting Requirements After the Award of the Grant

The grantee shall furnish the reports and documents listed below:

1. Financial Reports

The grantee shall submit to the Department's Federal Representative an original and two copies of a quarterly detailed account of expenditures. The detailed report of expenditures must include the same line items of cost categories as those specified in the grant budget.

2. Program Reports

The grantee shall submit an original and two copies of each of the following reports or materials to the Federal Representatives within the specified time.

(a) *Quarterly Progress Reports.* The grantee shall submit within 10 days following the end of each quarter, a quarterly progress report, which provides a detailed account of services provided during each quarter of grant performance. Reports shall include, in brief narrative form, such information as:

(a) A description of overall progress of work activities accomplished during the reported period;

(2) an indication of any current problems which may delay performance, and proposed corrective action, if any; and

(3) program status and financial data/information relative to expenditure rate versus budget, anticipated staff changes, etc.

(b) *Draft* Training Materials. These materials shall be submitted at least one month prior to any training session in which they are used. Training materials may include technical assistance guides or manuals, workbooks, exercises or audio visual aids.

(c) *Final* Training Materials. These materials shall be submitted when they are used in training sessions.

(d) *Draft* Evaluation Report. This report shall be submitted at least 2 months prior to the grant expiration date. This report should evaluate the technical assistance effort. It should list common problems States and local areas had in replicating STEP, suggested solutions to them, and make recommendations for ways in which future technical assistance can address those or any other problems.

(e) *Final* Evaluation Report. This report shall be submitted by the grant expiration date.

Signed at Washington, DC, on June 29, 1988.

Roberts T. Jones,

Acting Assistant Secretary of Labor.

Appendix A—Budget Information

Each applicant shall submit a project budget using the following format. In addition, a detailed breakdown supporting each budget line item is required.

Special Clause No. Budget

	Government	Grantee contribution	Total
Direct Costs:			
Staff salaries and wages.	$——	$——	$——
Fringe benefits for staff.	——	——	——
Staff travel and per diem.	——	——	——
Consultant fees	——	——	——
Materials and supplies.	——	——	——
Communications	——	——	——
Subcontract	——	——	——
Total Direct Costs.	$——	$——	$——
Indirect Costs	——	——	——
Total Estimated Cost.	$——	$——	$——

Note.—The maximum Government contribution under this grant will be $——.

[FR Doc. 88-15980 Filed 7-14-88; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution

Avenue NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

District of Columbia:
DC88-1 (Jan. 8, 1988) ..... pp. 78, 84.
Pennsylvania:
PA88-6 (Jan. 8, 1988) ..... pp. 894-896.
West Virginia:
WV88-2 (Jan. 8, 1988) ..... p. 1183.
WV88-3 (Jan. 8, 1988) ..... pp. 1207-1208, P. 1214.

Volume II

Iowa:
IA88-1 (Jan. 8, 1988) ..... p. 22.
IA88-2 (Jan. 8, 1988) ..... pp. 28-29.
Illinois:
IL88-7 (Jan. 8, 1988) ..... p. 138.
Indiana:
IN88-4 (Jan. 8, 1988) ..... p. 279.
Michigan:
MI88-2 (Jan. 8, 1988) ..... p. 426.
MI88-5 (Jan. 8, 1988) ..... p. 462.
New Mexico:
NM88-1 (Jan. 8, 1988) ..... pp. 696, 699.

Volume III

Colorado:
CO88-2 (Jan. 8, 1988) ..... pp. 114-114b.
CO88-4 (Jan. 8, 1988) ..... pp. 120-121.
Idaho:
ID88-1 (Jan. 8, 1988) ..... p. 143.
Nevada:
NV88-3 (Jan. 8, 1988) ..... p. 266.
NV88-4 (Jan. 8, 1988) ..... p. 272.
NV88-5 (Jan. 8, 1988) ..... p. 282.
Oregon:
OR88-1 (Jan. 8, 1988) ..... p. 303; pp. 305-316b.
Washington:
WA88-1 (Jan. 8, 1988) ..... pp. 364, 366; pp. 376-377.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3232.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edution (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 8th day of July 1988.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 88-15753 Filed 7-14-88; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-88-104-C]

Blue Diamond Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Blue Diamond Coal Company, HC 67, Box 1290, Cumberland, Kentucky 40823 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Scotia Mine (I.D. No. 15-02055) located in Letcher County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that after an experiment was conducted with the projection system, the length of the tailgate panel identified as No. 1 entry "D" Gate longwall panel deteriorated.

3. As an alternate method, petitioner proposes to establish check points for an 1800 foot length of the No. 1 entry "D" Gate longwall panel. This entry would be a future tailgate entry for the longwall when it is set up in the entry connecting "E" Gate longwall panel to the "D" Gate Panel.

4. In support of this request, petitioner states that—

(a) Miners would be informed as to the condition of the tailgate;

(b) Miners would be refreshed in the use of the self-contained self-rescuers, which are stored at the tailgate and near the headgate;

(c) Communications are in place at the headgate to the dispatcher, who is always on duty, and communications are in place from the headgate throughout the longwall face. A person is always at the headgate when people are in the face;

(d) Additional support would be set in the headgate area as a precautionary measure until the point is reached where the tailgate is accessible for travel;

(e) Daily examinations would be made of the checkpoints to evaluate their condition;

(f) Three of four separate escape routes would be provided from the headgate to the mouth of the section or around the bleeder;

(g) The belt air is being continuously monitored with low-level carbon monoxide sensors; and

(h) Two continuous methane monitors have been added, making a total of three, with constant readouts at the headgate indicating the presence of methane throughout the face.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 15, 1988. Copies of the petition are available for inspection at that address.

Date: July 11, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-15981 Filed 7-14-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-115-C]

Helvetia Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Helvetia Coal Company, Box 729, Indiana, Pennsylvania 15701 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer substations, compressor stations, shops, and permanent pumps) to its Lucerne No. 6 Mine (I.D. No. 36-00917) located in Indiana County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. Petitioner has electrical installations which are currently being ventilated into the 1½ South Returns, the only return entries in this portion of the West Mains. These returns will be converted into intake entries for a more efficient ventilation system. This will prohibit normal ventilation of these installations directly into the return.

3. As an alternate method, petitioner proposes that—

(a) The electric equipment would be housed in a fireproof structure or area, equipped with automatically closing fire doors activated by thermal devices with an activation temperature not greater than 165 degrees Fahrenheit. Such fire doors wold be designed to enclose all associated electric components in a reasonably airtight enclosure in case of a fire or excessive temperature;

(b) A signal activated by a heat sensor, would be located so that it can be seen or heard by a responsible person;

(c) The electric equipment would be protected with thermal devices, or equivalent, designated and installed to interupt all power circuits supplying electric equipment with the fireproof structure;

(d) A suitable automatic fire suppression system would be installed and maintained in the fireproof structure area;

(e) Flammable or combustible material would not be stored or allowed to accumulate in the fireproof structure or area. The area within the structure would be clean and rock dusted;

(f) Firefighting equipment would be provided on the outside of the fireproof structure on the intake side;

(g) The electric equipment and related enclosure would be examined, tested, and maintained by a qualified person. These examinations and tests would include the electric equipment, the automatically closing fire doors, the signalling system and the automatic fire suppression system. The results of these tests and examinations would be recorded in the appropriate record books maintained on the surface; and

(h) The area enclosing the structure would be examined daily for hazardous conditions and a record of the examinations would be kept in a book on the surface.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 15, 1988. Copies of the petition are available for inspection at that address.

Date: July 11, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-15982 Filed 7-14-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-128-C]

Mullis Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Mullis Coal Company, General Delivery, Gausdale, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 2 Mine (I.D. No. 15-15835) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and is required to be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been deteched in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthyly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Person interested in this petition may furnish written comments. These comments must be filed with the Office of Standard, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 15, 1988. Copies of the petition are available for inspection at that address.

Date: July 11, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-15983 Filed 7-14-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-118-C]

Quarto Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Quarto Mining Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Powhatan No. 4 Mine (I.D. No. 33-01157) located in Monroe County, Ohio. The petition is filed under section 101(c)

of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. Petitioner states that four underground pump installations located adjacent to the mine's main trolley haulage through the old works are not able to be ventilated effectively to the returns, due to deteriorating roof conditions. Even if ventilation tubing could be installed to the return, it would be ineffective due to the extreme distance. Supporting the falls to the return would pose unnecessary risks to the miners.

3. As an alternate method, petitioner proposes that—

(a) The pump installations would be housed in a fireproof structure, equipped with automatically closing fire doors activated by thermal devices with an activation temperature not greater than 165 degrees Fahrenheit. Such fire doors would be designed to enclose all associated electric components in a reasonably airtight enclosure in case of a fire or excessive temperature;

(b) An audible and visual signal, activated by the heat sensors, would be located so that it can be seen or heard by a responsible person;

(c) The electric equipment would be protected with thermal devices, or equivalent, designed and installed to interrupt all power circuits supplying electric equipment within the fireproof structure;

(d) A suitable automatic fire suppression system would be installed and maintained in the fireproof structure in accordance with applicable provisions;

(e) Flammable or combustible material would not be stored or be allowed to accumulate in the fireproof structure;

(f) Firefighting equipment would be provided on the outside of the fireproof structure on the intake side;

(g) The electric equipment would be examined, tested, and maintained by a qualified person. These examinations and tests would include the electric equipment, the automatically closing fire doors, the signalling system, and the automatic fire suppression system; and

(h) The area enclosing the structure would be examined daily for hazardous conditions. A record of the examinations would be kept in a book on the surface.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 15, 1988. Copies of the petition are available for inspection at that address.

Date: July 11, 1988

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88–15984 Filed 7–14–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–129–C]

Summit Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Summit Coal Company, R.D. No. 1, Box 12–A, Klingerstown, Pennsylvania 17941, has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Summit Slope (I.D. No. 36–07981) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follow:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 15, 1988. Copies of the petition are available for inspection at that address.

Dated: July 8, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88–15985 Filed 7–14–88; 8:45 am]

BILLING CODE 4510–43–M

Pension and Welfare Benefits Administration

[Application No. D–5600]

Amendment to Prohibited Transaction Exemption (PTE) 82–87 for Transactions Involving Certain Residential Mortgage Financing Arrangements; Correction

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Correction.

SUMMARY: In 53 FR, published at page 24811, on Thursday, June 30, 1988, make the following correction:

1. On page 24816, in the second column under "[D]" in the fifteenth line through the seventeenth line, delete "[insert the date of publication in the **Federal Register** of the final grant of the amended class exemption]" and insert therein "June 30, 1988". Under "[E]" in the second line through the fourth line, delete "[insert the date of publication in the **Federal Register** of the final grant of the amended class exemption]" and insert therein "June 30, 1988".

Signed at Washington, DC, this 12th day of July, 1988.

Robert J. Doyle,

Acting Director of Regulations and Interpretations Pension and Welfare Benefits Administration.

[FR Doc. 88–15986 Filed 7–14–88; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 88-60; Exemption Application No. D-6061 et al.]

Grant of Individual Exemptions; AmeriTrust Company National Association (AmeriTrust) et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

AmeriTrust Company National Association (AmeriTrust) Located in Cleveland, Ohio

[Prohibited Transaction Exemption 88-60; Exemption Application No. D-6061]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(F) of the Code, shall not apply to the proposed receipt of fees by AmeriTrust from the Financial Reserves Fund, an open-end investment company for which AmeriTrust performs services, in connection with the investment of funds through a daily automated sweep arrangement, of those individual retirement accounts (the IRAs) for which AmeriTrust acts as trustee, under the terms described in the notice of proposed exemption.[1]

[1] Because the IRAs do not meet the conditions described in 29 CFR 2510.3-2(d), there is no jurisdiction under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 25, 1988 at 53 FR 18921.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Drs. Pauly, Cocotos, Sherman, Koch, Burigo and Ross, P.A. Pension Plan and Trust and Drs. Pauly, Cocotos, Sherman, Koch, Burigo and Ross, P.A. Profit Sharing Plan and Trust (collectively, the Plans) Located in West Palm Beach, FL

[Prohibited Transaction Exemption 88-61; Exemption Application Nos. D-7160 and D-7161, respectively]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plans of certain improved real property consisting of a parcel of land (the Land) and a building (the Building) situated thereon, for the total cash consideration of $379,761, to a trust, the beneficiaries of whom are the six shareholders of Drs. Cocotos, Sherman, Koch, Burigo and Ross, P.A. and several of their spouses, provided the amount paid for the Land and the Building is not less than fair market value at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 25, 1988 at 53 FR 18930.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

The NYNEX Master Pension Trust (the Trust) Located in New York, New York

[Prohibited Transaction Exemption 88-62 Exemption Application Nos. D-7171 and D-7172]

Exemption

(a) General Exemption

The restrictions of section 406(a)(1) (A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to any transaction arising in connection with the acquisition, ownership, management,

development, leasing or sale of real property (including the acquisition, ownership or sale of any joint venture or partnership interest in such property) and the borrowing or lending of money in connection therewith, between a party in interest with respect to the Trust and the Trust, provided that the following conditions are satisfied:

(1) The decision to invest the assets of the Trust, directly or indirectly, in such transaction is made by the NYNEX Corporation (NYNEX) or the Treasurer of NYNEX as a fiduciary of the trust;

(2) Any such party in interest is not–

(i) NYNEX, any person directly or indirectly controlling, controlled by, or under common control with NYNEX, any officer, director or employee of NYNEX or any of its subsidiaries or affiliated companies, or any partnership in which NYNEX is a 10 percent or more (directly or indirectly in capital or profits) partner, or

(ii) A person who exercises discretionary authority, responsibility or control or who provides investment advice with respect to the investment of Trust assets involved in the particular transaction;

(3) At the time the transaction is entered into and at the time of any subsequent renewal or modification thereof that requires the consent of the Treasurer of NYNEX or any person to whom such responsibility has been delegated, the terms of the transaction are at least as favorable to the Trust as the terms generally available in arm's-length transactions between unrelated parties;

(4) NYNEX shall maintain for a period of six years from the date of each transaction mentioned above the records necessary to enable the persons described in subparagaph (5) of this section (a) to determine whether the conditions of this exemption have been met, except that (i) a prohibited transaction will not be deemed to have occurred if due to circumstances beyond the control of NYNEX the records are lost or destroyed prior to the end of the six year period, and (ii) no party in interst shall be subject to the civil penalty which may be assessed under section 501(1) of the Act or to the taxes imposed by section 4975 (a) and (b) of the Code if the records are not maintained or are not available for examination as required by subparagraph (5) below; and

(5)(i) Except as provided in subdivision (ii) of this subparagraph (5) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in subparagraph (4) of this section (a) are unconditionally available at NYNEX's headquarter's offices or, upon prior arrangement with NYNEX, at any other customary location for the maintenance and/or retention of such records, for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service.

(B) Any fiduciary of a plan which is funded, in whole or part, by the Trust, or any duly authorized employee or representative of such fiduciary.

(C) Any participant or beneficiary of any plan which is funded, in whole or part, by the Trust, or any duly authorized representative of such participant or beneficiary.

(ii) None of the persons described in subdivisions (i)(B) and (i)(C) of this subparagraph (5) shall be authorized to examine NYNEX's trade secrets or commercial or financial information which is privileged, confidential or of a proprietary nature.

(b) Specific Exemption

The restrictions of section 406(a)(1)(A) through (D) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to:

Transactions Involving Places of Public Accommodation. The furnishing of services, facilities and any goods incidential thereto by a place of public accommodation which is or may be considered an asset of the Trust to a party in interest with respect to the Trust if the services, facilities or incidential goods are furnished on a comparable basis to the general public, and if the requirements of subparagraphs (a) (4) and (5) of this proposed exemption are met.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 22, 1988 at 53 FR 13350.

Effective Date: This exemption is effective January 1, 1986.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Popham, Haik, Schnobrich & Kaufman, Ltd., 401(k) Profit Sharing Plan and Trust (the Plan) Located in Minneapolis, Minnesota

[Prohibited Transaction Exemption 88–63; Exemption Application No. D–7327]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the past purchase by the individually directed accounts in the Plan held by certain shareholders, who are also employees and/or officers and directors of Popham, Haik, Schnobrich & Kaufman, Ltd. (the Employer), the Plan sponsor and a party in interest with the respect to the Plan, of 89,000 shares of stock owned by the Employer/Plan sponsor; provided the terms and conditions of the transactions were as favorable to the Plan as those which could have been obtained in an arm's-length transaction between unrelated parties.

Effective Date: March 25, 1987.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 7, 1988 at 53 FR 20919.

For Further Information Contact: Mrs. Betsy Scott of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Retirement Plan for Non-Bargaining Unit Employees of the Altoona Hospital and the Retirement Plan for Bargaining Unit Employees of the Altoona Hospital (together, the Plans) Located in Altoona, Pennsylvania

[Prohibited Transaction Exemption 88–64; Exemption Application Nos. D–7379 and D–7380]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed exchange of certain publicly-traded securities between the Plans and the Funded Depreciation Fund for the Altoona Hospital, the sponsor of the Plans.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 25, 1988 at 53 FR 18932.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Upper Peninsula Building and Construction Industry Investment Plan (the Program) Located in Escanaba, MI

[Prohibited Transaction Exemption 88–65; Exemption Application No. D–7388]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the proposed participation by employee pension plans (the Plans) in construction mortgage loans through the Program where such loans are already committed to parties in interest with respect to such Plans, by certain lending institutions, provided that the terms of the loans are not less favorable to the Plans than those terms available in transactions with unrelated parties; and provided that the terms and conditions, as described in the notice of proposed exemption, are complied with during the operation of the Program.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 22, 1988 at 53 FR 13356.

Written Comments: The Department received one written comment to the notice of proposed exemption which was submitted by the applicants' representative. The commentator informed the Department that the State of Michigan Laborers' District Council Pension Plan and Trust, the Michigan Carpenters Pension Plan and Trust and the Operating Engineers Local No. 324 Pension Plan and Trust, which had initially joined in the exemption request, had decided not to participate in the contemplated transactions and did not wish the granted exemption to apply to them. The commentator indicated that the Upper Peninsula Plumbers and Pipefitters Pension Fund, Local 783 of the International Association of Bridge, Structural and Ornamental Ironworkers Pension Fund and the Michigan Upper Peninsula IBEW Pension Plan and Trust still wanted approval of the subject exemption and as such, had given timely notice to interested persons. Accordingly, the Department has considered the entire record, including the comment submitted, and has determined to grant the exemption as it has been proposed.

For Further Information Contact: Ms. Jan Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Linda Wells, Inc. Pension Plan and Trust, and Linda Wells, Inc. Profit Sharing Plan and Trust (the Plans) Located in New York, New York

[Prohibited Transaction Exemption 88–66; Exemption Application Nos. D–7400 and D–7412]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plans of certain improved real property to Linda Wells, a disqualified person with respect to the Plans, provided that the terms of such sale are at least as favorable to the Plans as the Plans could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on Wednesday, May 25, 1988 at 53 FR 18934.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Corneluis C. Rose Associates, Inc. Defined Benefit Pension Plan, Corneluis C. Rose Associates, Inc. Employee Target Benefit Plan and Trust, and Corneluis C. Rose, Associates, Inc. Profit Sharing Plan (collectively, the Plans) Located in Hanover, New Hampshire

[Prohibited Transaction Exemption 88–67; Exemption Application Nos. D–7480 through D–7482]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to sales (the Sales) of certain securities made to the Plans on November 22 and December 30, 1982, and on March 24, 1983, by Corneluis C. Rose, a disqualified person with respect to the Plans, to the extent that the aggregate values of the securities sold to each of the Plans did not exceed 25 percent of the total assets of each of the Plans on the dates of the respective Sales, and also, provided that the terms of the Sales were not less favorable to the Plans than terms obtainable in arm's-length transactions with unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 25, 1988, at 53 FR 18927.

Effective Date: This exemption will be effective November 22 and December 30, 1982, and March 24, 1983, the dates the securities were sold to the Plans as described in the proposed exemption.

For Further Information Contact: Mr. C. E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Metro Electrical Joint Apprenticeship and Training Trust (the Plan) Located in Portland, OR

[Prohibited Transaction Exemption 88–68; Exemption Application No. D–7528]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act shall not apply to the proposed sale by the Plan of a tract of unimproved land (the Lot), for the total cash consideration of $45,500, to Electric Workers Local 48 Building Association, Inc., a party in interest with respect to the Plan, provided the amount paid for the Lot is not less than fair market value at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 25, 1988 at 53 FR 18934.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Charles D. Pemberton Self-Employed Retirement Plan (the Plan) Located in Lubbock, Texas

[Prohibited Transaction Exemption 88–69; Exemption Application No. D–7541]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the loan by the Plan of $45,000 (the Loan) to Charles D. Pemberton, the owner-employee and participant in the Plan and a disqualified person with respect to the Plan, provided that the terms and conditions of the proposed Loan be no less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated third party at the time of the making of the proposed Loan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this

exemption refer to the notice of proposed exemption published on June 10, 1988 at FR 21941.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Colorado Imaging Associates, P.C. Profit Sharing Plan (the Plan) Located in Littleton, Colorado

[Prohibited Transaction Exemption 88–70; Exemption Application No. D–7549]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale to Neal Goodman, M.D., Paul K. Danner, M.D., David A. Raetz, M.D., and Kenneth B. Reynard, M.D., of certain diamonds (the Diamonds) from their individually directed accounts in the Plan, provided that the sale price be no less than the retail fair market value of the Diamonds on the date of sale as established by an independent qualified appraiser.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 10, 1988 at 53 FR 21941.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

D.W. Brown, M.D. Inc. Defined Benefit Plan and Trust (the Plan) Located in Sacramento, California

[Prohibited Transaction Exemption 88–71; Exemption Application No. D–7579]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of a certain parcel of unimproved real property and related water rights (the Property) to Donald W. Brown, M.D., and Margaret R. Brown, his wife, both of whom are disqualified persons with respect to the Plan, provided that the sales price for the Property is not less than the fair market value of the Property on the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 10, 1988 at 53 FR 21945.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describe all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 12th day of July 1988.

Robert J. Doyle,

Acting Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88–15987 Filed 7–14–88; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–7290] et al.

Proposed Exemptions; Consolidated Electrical Distributors, Inc. Employees' Retirement Plan et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedures 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Consolidated Electrical Distributors, Inc. Employees' Retirement Plan (the Plan) Located in Village, California

[Application No. D–7290]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale of four mortgage notes to the Plan by Edmundston International, Inc. (Edmundston), a wholly-owned subsidiary of Consolidated Electrical Distributors, Inc., the Plan Sponsor and therefore a party in interest, nor to the guarantee of repayment by the Plan Sponsor on default, provided that the

terms and conditions of sale are at least as favorable to the Plan as those which the plan could receive in similar transactions with unrelated parties.

Summary of Facts and Representations

1. The Plan is a non-contributory defined benefit pension plan which was established on January 1, 1969. The Plan has approximately 2025 participants and net assets of $59,246,752 as of December 31, 1986. The Plan's trustee is Trust Services of America, Inc. (the Trustee). The Plan Sponsor is a Delaware corporation engaged primarily in the wholesale distribution of electrical parts. Edmundston's primary function is to hold assets for the Plan Sponsor which are unrelated to its basic electrical business.

2. The applicant represents that the Plan currently has a substantial portion of its current assets available for reinvestment. The Plan proposes to use a portion of these assets to purchase four adjustable rate mortgage notes (the Mortgages) from Edmundston.[1]

Original loan amount	Loan balance (9/87)	Appraised value of collateral	Interest rate (percent)	Original term of loan (years)	Maturity date of loan
1. 300,000	294,860	490,000	11	30	5/1/2014
2. 418,600	411,367	552,000	11¼	30	4/1/2014
3. 275,000	271,886	490,000	11	30	5/1/2015
4. 182,000	180,583	256,000	11	30	1/1/2016
Total		1,788,000			

3. The Mortgages originated from purchases of condominium units in a fifty-eight story residential and commercial office building (the Property) located at 950 N. Michigan Avenue, Chicago, Illinois. The Property was developed by Newcastle Properties, Inc. (Newcastle), a wholly-owned subsidiary of the Plan Sponsor. Once all the condominium units were sold by Newcastle, it became inactive and as part of its winding down process transferred the Mortgages to Edmundston. The applicant represents that all of the mortgagors on the Mortgages to be sold to the Plan are unrelated parties.

4. The Mortgages provide for monthly payments of principal and interest with the interest rate being adjusted every five years based on the weekly average yield on United States Treasury securities adjusted to a constant maturity of 5 years. The rate adjustment formula requires that 2.5% be added to the current rate for 5-year Treasury notes.

5. The condominium units acting as collateral for the Mortgages were appraised by John F. Miaso, S.R.A. of Alpha Appraisal Services, Inc. as having a total combined appraised value of $1,788,000 as of December 11, 1987 (See individual appraised amounts of condominiums in footnote, supra). The Mortgages being sold to the Plan represent a first lien on such properties and will be recorded as such. In addition, the Plan will not pay any commissions or other expenses in connection with this transaction and the Plan Sponsor will repurchase from the Plan any Mortgage in the event of default.

6. The Trustee provides administrative and investment management services to employee benefit plans. The Trustee represents that it will serve as independent fiduciary for the Plan in the subject transaction and that it holds no financial or other business relationship with the Plan Sponsor or its affiliates. The Trustee has reviewed all aspects of the proposed sale including the terms of the Mortgages, the current market value of the condominium units serving as collateral and the payment history of the mortgagors. Based on this analysis the Trustee believes that the purchase of the Mortgages by the Plan is a prudent investment and is in the best interests of, and protective of, the Plan and its participants and beneficiaries. The Trustee represents that the Property is well located and expected to continue to rise in value and coupled with the current high rates of interest being paid on the Mortgages, provides safety as well as a strong rate of return to the Plan. The Trustee represents further that the Mortgages would be an appropriate addition to the Plan's portfolio, with total Plan mortgage holdings constituting 5.7% of Plan assets after the purchase.

The Trustee represents that it will monitor the transaction and ensure that all payments are promptly received and will take all appropriate steps to enforce the rights of the Plan.

7. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act because, among other things:

(a) The Plan will pay the appraised value for the Mortgages;

(b) The Plan will not pay any costs or other expenses in connection with the sale of the Mortgages;

(c) The Plan Sponsor has agreed to repurchase the Mortgages if there is a default; and

(d) The Trustee has reviewed the proposed transaction and has concluded that it is in the interest of and protective of the Plan and its participants and beneficiaries.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Mayfield Corporation Defined Benefit Pension Plan and Trust (the Plan) Located in Houston, Texas

[Application No. D–7467]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75–26, 1975–1 C.B. 722. If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the loans made by the Mary Iris Goldston Corporation (Goldston) to the Plan, provided that the terms and conditions of the loans were at least as favorable to the Plan as those which the Plan would receive in similar transactions with unrelated parties.[1]

Effective Date: If granted, the proposed exemption will be effective August 17, 1987.

[1] Mortgage Loan Rate.

[1] Since Mr. Jack H. Mayfield, Jr. (Mr. Mayfield) is the only participant in the Plan there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Summary of Facts and Representations

1. The Plan is a defined benefit plan with net assets as of September 30, 1987 of $773,796. The trustee of the Plan is American Industries Trust Company. Mr. Mayfield, the sole participant in the Plan, owns 85.2% of the stock of the Plan Sponsor. Goldston and the Plan Sponsor are in the business of oil and gas exploration and production.

2. On November 1, 1986, Goldston executed an agency agreement with the Plan, for the purpose of acquiring for the Plan an oil and gas mineral interest in the Eunice Monument South Unit in Lea County, New Mexico (the Property). In order to purchase the Property, Goldston advanced funds on the Plans behalf. Unsecured loans of $60,480 and $75,168 were made on behalf of the Plan on January 1, 1987 and May 11, 1987 by Goldston. No fees were charged by Goldston for the services provided to the Plan nor was any interest charged on the loans.

3. Goldston, prior to August 17, 1987, was owned 100% by Iris T. Goldston, (Ms. Goldston). Ms. Goldston was deceased on August 17, 1987. At that time, ownership of 60% of Goldston transferred to the three adult children of Mr. Mayfield. Therefore, the applicant represents that Mr. Mayfield indirectly owns 60% of Goldston. This indirect ownership resulted in Goldston being classified as a disqualified person under section 4975(e)(2)(G) of the Code effective August 17, 1987 and the outstanding loans becoming prohibited transactions under section 4975(c)(1)(A) of the Code.[2]

4. It was anticipated that the loans would be repaid upon legal assignment of the royalty interest to the Plan. Such assignment, however, was not made until February 12, 1988 because of the death of Ms. Goldston. The loans, however, remain outstanding pending resolution of the exemption request.

5. The applicant represents that the loans were in the Plan's best interest because they enabled the Plan to purchase the Property at a competitive price. In addition, the loans made to the Plan were interest free as well as being unsecured. Goldston didn't charge any fees for its services and Mr. Mayfield, the sole participant in the Plan, made the decision that this investment should be made.

6. In summary, the applicant represents that the loans met the statutory criteria for an exemption under section 4975(c)(2) of the Code because:

(a) The loans to the Plan were both interest free and unsecured; and

(b) Mr. Mayfield is the only Plan participant effected by the loan transactions and he desired that the transaction be consummated.

Notice to Interested Persons: Because Mr. Mayfield is the only participant in the Plan, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

For Further Information Contact: Mr. Alan Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Frank Pavel, D.D.S., Inc. Money Purchase Pension Plan (the Plan) Located in San Diego, California

[Application No. D–7498]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406 (a)(1), (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed purchase of two limited partnership units (the Units) by the self-directed account (the Account) in the Plan of Frank Pavel, D.D.S. (Dr. Pavel), from Dr. Pavel and his wife (the Pavels); provided the terms and conditions of the transaction will be similar to those obtainable by the Plan in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a money purchase pension plan with individually directed separate accounts. As of June 30, 1987, the Plan had 7 participants and Dr. Pavel's Account held $1,900,524.69 in assets. The trustee of the Plan is San Diego Trust & Savings Bank.

2. The Pavels currently own twelve Units of Segal-Gerber Properties, Limited Partnership (the LP). The remaining Units in the LP are owned by parties unrelated to the Pavels and the Plan. The LP is a group of Texas limited partnerships which own and operate more than 1,000 apartments in ten U.S. Department of Housing and Urban Development projects in Texas and Arkansas.

3. The Pavels now wish to sell two Units to Dr. Pavel's Account in the Plan for the lower of their acquisition cost or their fair market value. Dr. Pavel believes the Units would be an excellent investment for the Plan. He represents that the Units would constitute a diversification of his Account's investment portfolio and would bring a high rate of return.

4. The Units have been appraised by W. Allen Jacobs, III, Vice President of Pacific Corporate Valuation, Inc., a qualified independent appraiser in La Jolla, California. Mr. Jacobs determined the Pavels twelve Units had a total fair market value of $1,416,000 or $118,000 for each Unit as of December 31, 1987. Each Unit cost the Pavels $113,750 as of December 31, 1987. The Account will pay the Pavels $227,500 to acquire the two Units and will pay required capital contributions as they become due. The Account will pay no fees or commissions in connection with the purchase. After consummation of the transaction, the Units will represent 12% of the Account's assets.

5. In summary, the applicant represents that the proposed transaction meets the criteria of section 408(a) of the Act because: (1) The transaction involves no more than 12% of the Account's assets; (2) the purchase price will be the lower of the acquisition cost of the Units or the fair market value as established by an independent appraisal and valuation; (3) Dr. Pavel is the only Plan participant to be affected by the transaction; and (4) Dr. Pavel has determined that the proposed transaction is appropriate for and in the best interest of the Account and he desires that the transaction be consummated by the Account.

Notice to Interested Persons: Because Dr. Pavel is the only participant in the Plan affected by the transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Therefore, comments and requests for a public hearing are due 30 days after the date of publication in the **Federal Register.**

For Further Information Contact: Mrs. Betsy Scott of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Sholom Home, Inc. Pension Plan and Trust (the Plan) Located in Minneapolis, Minnesota

[Application No. D–7519]

Proposed Exemption

The Department is considering granting an exemption under the

[2] The applicant represents that Goldston was not a disqualified person with respect to the Plan prior to August 17, 1987.

authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale by the Plan to Sholom Home, Inc., the Plan sponsor (the Plan Sponsor), of all rights under a group annuity contract (the Contract) in exchange for a cash payment to the Plan of not less than the fair market value of the Contract as of the date of sale.

Summary of Facts and Representations

1. The Plan is a defined contribution plan which was terminated effective December 31, 1987. A determination letter has been requested from the Internal Revenue Service approving the termination. As of February 24, 1988, the Plan had 262 participants and total assets of $1,096,052.08.

2. Among the Plan's assets is a group annuity contract (the Contract) with Ohio National Life Insurance Company of Cincinnati, Ohio (the Carrier), with face value of $250,000 and accrued interest of $29,624.72 as of December 31, 1987. The Contract pays interest at 8.01% per annum. Pursuant to the terms of the Contract a lump sum payment at maturity will not be made until July 22, 1989. If payment by the Carrier is made prior to the maturity date, an early withdrawal penalty is imposed in the form of an 18% discount of face amount plus accrued interest.

3. On May 16, 1988, Barbara A. Hopewell, Esquire, Assistant Counsel of the Carrier, represented that the Carrier has no objection to the assignment of the Contract to the Plan Sponsor. She further represented that the fair market value of the Contract as of August 31, 1988 will be $294,147.92 without regard to any early withdrawal penalty.

4. Accordingly, the Plan Sponsor proposes to purchase from the Plan all rights under the Contract in exchange for a cash payment to the Plan in an amount equal to the fair market value of the Contract as of the date of sale as determined by the Carrier. In so doing, the Plan would avoid the penalty for early withdrawal or the expense of maintaining a trust until such time as the total amount due under the Contract has been received, and would be able to make prompt distribution of all benefits under the Contract to the participants.

5. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a) of the Act because: (a) All rights under the Contract will be sold to the Plan Sponsor for an amount in cash equal to the fair market value of the Contract as of the date of sale as determined by the Carrier; (b) the sale represents a one-time transaction for cash which can be easily verified; (c) the sale will not require the payment of any commissions, fees, or taxes by the Plan; and (d) the Plan will be able to complete distribution of its assets to its participants in a timely manner without incurring a penalty for early withdrawal from the Contract.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fudiciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fudiciary responsibility provisions of section 404 of the Act, which among other things require a fudiciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC., this 12th day of July 1988.

Robert J. Doyle,

Acting Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88–15988 Filed 7–14–88; 8:45 am]

BILLIING CODE 4510–29–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–824]

Finding of No Significant Impact; Amendment of Special Nuclear Material License No. SNM–778; Babcock and Wilcox NNFD Research Laboratory

The U.S. Nuclear Regulatory Commission (the Commission) is considering the amendment of Special Nuclear Material License No. SNM–778 for the construction of a temporary storage facility at Babcock & Wilcox's (B&W) NNFD Research Laboratory in Lynchburg, Virginia.

Environmental Assessment

Identification of the Proposed Action

The proposed action is the construction and use of a temporary storage facility for hot cell waste. This facility will be an in-ground array of eight vertical, concrete cylinders arranged in two rows of four with 24 inches of concrete shielding at the top of each cylinder. The bottom of the cylinders will be at approximately 560 ft mean sea level (MSL) which is 58 ft above the Standard Project Flood determined by the U.S. Army Corps of Engineers for the James River at the B&W site.

The top of the concrete shielding will be approximately at ground level. Each cylinder will be 6 feet in diameter and 13-feet tall, and each is equipped with a stainless steel drain pipe which leads to a common sampling pit and rests on a common concrete pad. The concrete slab is surrounded by a foundation drain system which pipes to a second sampling pit. The two sampling pits will be sampled regularly and analyzed for the presence of radioactive material. In this facility, the stored waste is in long-life containers, the majority of which are stainless steel, 30-gallon drums. Others will be 30- and 55-gallon carbon steel

drums but will be overpacked in stainless steel or galvanized drums.

Need for the Proposed Action

Presently, hot cell waste is stored in the Annex of Building J. This facility is full, and the normal operations in support of existing and anticipated contracts will generate approximately 100 more drums over the next 5 years. This waste is being stored onsite until it is accepted by the Department of Energy under the Nuclear Waste Policy Act of 1982. Denying the construction and use of this facility would completely curtail the normal operations associated with the hot cells.

Environmental Impact of the Proposed Action

Since only dry containerized waste will be stored in this facility, there should be no effluents produced. Any rain or snowmelt that manages to enter the concrete cylinders will automatically drain into the sampling pit. This water will be periodically removed. In the unlikely event that water should penetrate the drums, any leachate would flow to the sampling pit before radioactive material could enter the ground water. The drums, concrete walls, and subterranean location will provide shielding to reduce radiation levels above ground to below regulatory levels.

Agencies and Persons Consulted

There was no contact with other agencies.

Finding of No Significant Impact

The Commission has determined not to prepare an Environmental Impact Statement for the proposed action. Based upon the Environmental Assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. The Environmental Assessment for the proposed action, on which this Finding of No Significant Impact is based, relies on the Babcock & Wilcox information submitted as Amendment 4 to License No. SNM-778, December 8, 1987, and the additional information submitted by B&W on March 30, 1988, and June 20, 1988.

The Environmental Assessment and the above documents related to this proposed action are available for public inspection and copying, for a fee, at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of the Environmental Assessment may be obtained by calling (301) 492-0609 or by writing to the Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 8th day of July, 1988.

For the Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 88-15965 Filed 7-14-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNM) will hold its third meeting on August 3-5, 1988. On August 3rd and 4th it will meet at 4:00 p.m. at the Holley Inn, 235 Richland Avenue and Laurens Street, Aiken, SC. The meetings will be concluded by 7:00 p.m. on those days. On August 5 the meeting will be held in Room 405, Fims Building, 2600 Bull Street, Columbia, SC. On that day the meeting will start at 2:00 p.m. and be concluded by 5:00 p.m. The entire meeting will be open to the public.

Wednesday, August 3, 1988

4:00 p.m.-7:00 p.m.: The Committee will discuss their visits to the LLW disposal facility at Barnewell, SC and the Chem-Nuclear operations center.

Thursday, August 4, 1988

4:00 p.m.-7:00 p.m.: The Committee will discuss their visit to the waste handling and storage facilities at DOE's Savannah River Plant.

Friday, August 5, 1988

2:00 p.m.-5:00 p.m.: The Committee will discuss their visit to the facilities of LN Technologies and meet with representatives of the South Carolina Bureau of Radiological Health.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. The Office of the ACRS is providing Staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the Office of the ACRS as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the Office of the ACRS, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

Dated: July 11, 1988.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 88-15966 Filed 7-14-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-400]

Carolina Power & Light Co., Shearon Harris Nuclear Power Plant, Unit 1; Exemption

I

Carolina Power & Light Company (the licensee) is the holder of Facility Operating License No. NPF-63, which authorizes operation of the Shearon Harris Nuclear Power Plant, Unit 1. The license provides, among other things, that the facility is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Section 103(c)(2) to 10 CFR Part 20 requires a determination by a physician at least once every 12 months that an individual is physically able to use the respiratory protective equipment in an environment containing airborne radioactive material.

By letter dated January 30, 1986, the licensee requested an exemption from 10 CFR 20.101(c)(2) with regard to the interval for the administration of a physical examination for users of respiratory equipment. Specifically, the licensee requested an exemption to permit the physicals to be administered at an interval of every 9 to 15 months rather than the currently scheduled 8 to 12 months. In support of its request, the licensee notes that the exemption would provide greater flexibility in scheduling of examinations and would preclude the need for administration of two examinations in the same calendar year.

The accepatibility of the exemption request is discussed below.

III

In order to satisfy the 10 CFR 20.103(c)(2) requirement of "at least once every 12 months," the licensee has to administratively schedule the physical examinations every 8 to 12 months because of the large number of workers for whom these examinations have to be scheduled. Therefore, over a period of a few years, a substantial number of workers would receive two physical examinations within one calendar year. This would result in an unnecessary expenditure of the licensee's resources. On the other hand, according to the licensee's proposed schedule of a physical examination of every 9 to 15 months, it would be possible for a worker to average fewer than one examination every year over an extended period of time, for example, only four examinations in five years. This practice clearly does not meet the intent of the regulation.

In order to provide the licensee with administrative flexibility and yet meet the intent of the regulation to provide one physical examination every year, the staff has determined that an exemption to 10 CFR 20.103(c)(2), as requested by the licensee, with a provision that total time over any three consecutive physical examination periods will not exceed 39 months, should be granted.

IV

The Commission has determined that, pursuant to 10 CFR 20.501, this exemption is authorized by law, and will not result in undue hazard to life or property. Accordingly, the Commission hereby grants an exemption related to the time interval requirement of 10 CFR 20.103(c)(2) on physical examinations from "at least once every 12 months" to "every 9 to 15 months, provided that the total time over any three consecutive physical examination periods does not exceed 39 months." Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption will have no significant impact on the environment (53 FR 24817).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 8th day of July 1988.

For the Nuclear Regulatory Commission.

Steven Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-15967 Filed 7-14-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25897; File No. SR-NYSE-88-17]

Self-Regulatory Organizations; Proposed Rule Changes by New York Stock Exchange, Inc., Relating to Debt Securities

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.SC.. 78s(b)(1), notice is hereby given that on June 22, 1988, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend some of its rules governing trading in debt securities.

In addition, the Exchange proposes to amend an interpretation of Rule 85(e)(1) with respect to the crossing procedure on the Automated Bond System.SM

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed revisions is to eliminate outdated bond rules, refine rules to address current bond trading procedures, and to narrow language of certain rules that do not apply to trading in bonds or in certain types of bonds.

Rule 61 defines recognized quotations in equities and bonds. The proposed amendments will allow minimum size lots and reduce the 50 bond minimum to 25 for all or none orders in cabinet bonds.

Rule 72 defines the priority and precedence of bids and offers. The proposed rule change makes clear that bonds dealt in by cabinets are not subject to this rule. Rather, trading in these bonds is governed by Rule 85.

Rule 79A governs bond trading on the Exchange floor (as distinguished from the cabinets). The proposed revisions clarify the definition of transactions at wide variations which would require approval of a Floor Official. Such transactions are those that occur two or more points away or 30 or more days from the last transaction.

The proposed revisions also eliminate confusing references to "free bonds," "free crowd" and "Bond Crowd". For the sake of consistency, the term "Bond Floor' is substituted. In addition, by deleting specific references to floor clerks and quote cards, the new rule provides for flexibility in the quote capture process.

Rule 85 governs trading in cabinet bonds, including bonds traded via the Automated Bond System. The proposed amendments to Rule 85 delete all references to month and week orders, which no longer exist. In addition, these amendments provide the Exchange with the flexibility to designate types of orders for particular issues of bonds.

Rules 124 deals with trading of odd-lot equity orders. The proposed change—the substitution of the word "stock" for "security"—does not affect the operation of the rule.

Foreign Currency Denominated Bonds

Recent listings have marked a return to the trading of foreign currency denominated bonds on the Exchange. The changes to Rules 55, 191 and 251 clarify the Exchange's practice with respect to these bonds.

Rule 55 defines units of trading for stocks and bonds. The proposed amendments would allow the Exchange to designate units of trading of other than $1,000 for U.S. dollar and foreign currency denominated bonds.

Rule 191 sets forth the manner in which contracts in foreign currency denominated bonds shall be made and settled. The rule specifies that such contracts shall be made and settled on the basis of U.S. currency equivalents set by the Exchange. The proposed amendment eliminates the Exchange's burden of setting currency equivalents and allows the parties to agree on the currency for contract settlements.

Rule 251 governs cash adjustment for coupons by establishing the time and basis for a foreign currency exchange in settlement of bond contracts. It is proposed that this rule be deleted. The rule is redundant as such situations are adequately covered by other Exchange

rules and, in most cases, by the prospectus as well.

Reinterpretation of Rule 85(e)(1)

Rule 85(e)(1) provides that when a member files a bid or offer in the cabinets as agent and then receives an order in the same security on the opposite side, he can "cross" the orders without making any further bids or offers provided that the first bid or offer has been in the cabinets for a "reasonable" period of time (allowing other members the chance to trade at the bid and offered prices) and that the member announces his intention to cross before he does so.

While Rule 85(e)(1) does not define a "reasonable period of time", a floor practice of 15 minutes had evolved, and is programmed into ABS.SM The 15 minute established bid and offer period serves a valid purpose where bids and offers are stored in physical cabinets. With physical cabinets, quote information is manually updated. In ABS, on the other hand, quotes are updated automatically. Thus, for crosses effected on ABS, 15 minute exposure is not reasonable. The new interpretation of "reasonable" in ABS establishes that time at two minutes.

The statutory basis under the Securities Exchange Act of 1934 (the "Act") is section 6(b)(5) and its requirement that a national securities exchange have rules that are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. The persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 5, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan Katz,

Secretary.

July 11, 1988.

[FR Doc. 88-15992 Filed 7-14-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25895; File No. SR-PCC-88-02]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change; Pacific Clearing Corp. ("PCC")

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 21, 1988, the Pacific Clearing Corporation ("PCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Three member committees, chaired by Governors of the Pacific Stock Exchange ("PSE"), were established for the purpose of examining the cost and revenue structure of PCC and PSE operations in Options, Equities, and Data Processing. These committees had extensive input from the membership community. The proposed changes to the fee structure of PCC were recommended by the Equities Committee.

There is a propsoed increase of $1.050 in post cashiering fees. In addition, there is a proposed charge of $8 per trade for each manually processed DTC ineligible Master Limited Partnership.

There is a proposed increase in fees for the Signature Guarantee Program. The fees for this program currently appear in the Schedule of Rates for PCC. Because the program is actually administered by PSE, the increased fees will now appear in the PSE Equities Schedule of Rates, and any reference to the program in PCC's Schedule will be deleted by this rule filing.

The proposed changes will be imposed on PSE members only, and should not impact the public.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In March 1988, PSE established three committees to examine the cost and revenue structure of PCC and PSE operations.

The Equities Committee, composed of 1 Director of PCC, 3 Governors, 8 specialists, 5 floor brokers, and 1 allied member of PSE, recommended the changes in PCC's fee structure. The increases proposed by this Committee are designed to allocate operating costs to members based on their usage of the trading floor.

Currently, a fee of $1,100 is charged to specialists for cashiering services provided or purchased by PCC. An increase of $1,050 is proposed. The increased total of $2,150 will be reviewed quarterly.

There is a proposed increase in fees for the Signature Guarantee Program, and for the Facsimile Stamp. The fees for this program currently appear in the Schedule of Rates for PCC. Because the program is actually administered by PSE, the increased fees will now appear in the PSE Equities Schedule of Rates, and any reference to the program in PCC's Schedule will be deleted by this rule filing.

In addition, a charge is proposed for manually processing DTC ineligible Master Limited Partnerships. The proposed charge is $8 per trade. Because these issues are ineligible at DTC, PCC staff must process these trades manually, by shipping securities to brokers and transfers agents.

The proposed rate changes and this rule proposal are consistent with sections 6(b)(4) and 17A of the Securities Exchange Act of 1934 (the "Act") in that they provide an equitable allocation of reasonable dues, fees and other charges among the members using the facilities of the PCC and with section 15A(b)(6) of the Act which requires that PSE's rules be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and, in general, protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PCC does not believe that the proposed rule changes impose a burden on competition. The changes should have no impact on the public.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The proposed changes are the result of recommendations of a member committee, which included one PCC director. Written comments were not received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule changes have become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraphs (e) of the Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR–PCC–88–2. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned, self-regulatory organization. All submissions should refer to the file number (File No. SR–PCC–88–2) and should be submitted by August 5, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 8, 1988.

Jonathan G. Katz,

Secretary.

FEE SCHEDULE—PACIFIC CLEARING CORPORATION SCHEDULE OF RATES AND CHARGES

[Italics indicates additions, brackets indicates deletions]

Post Cashiering	● [$1,100.00 per month] *$2,150/month.*
Post Clearing	● $1,650.00 per month. ● *Each manually processed DTC ineligible Master Limited Partnership $8.00/trade.*
[Signature Card Program]	[● Additions and Deletions: $50.00 for first name change. $25.00 for each change thereafter. Plus pass-through of postage and mailing expense. Maintenance Fee—$50.00 per year.]

[FR Doc. 88–15993 Filed 7–14–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–16479; 812–7063]

Public Facility Loan Trust; Application

July 12, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Shawmut Bank, N.A., not in its individual capacity, but solely as trustee (the "Applicant" or "Owner Trustee"), on behalf of the Public Facility Loan Trust (the "Trust").

Relevant Sections of the 1940 Act: Exemption requested under section 6(c) from the provisions of sections 10(h), 14(a), 16(a), 17 (a) and (d), 18 (a), and (c) and (i) and 32(a) of the 1940 Act.

Summary of the Application: The Applicant, serving as Owner Trustee on behalf of the Trust, seeks an order to permit the issuance and sale by the Trust of debt securities and two classes of certificates of beneficial interest in the Trust, collateralized by certain loans originated by the United States Department of Housing and Urban Development ("HUD"), in connection with the Federal government's loan asset sale program.

Filing Date: The Application was filed on July 12, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by SEC by 5:30 p.m. on July 27, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Applicant, c/o Geoffrey K. Hurley, Esq., Shadden, Arps, Slate, Meagher & Flom, 919 Third Avenue, New York, New York 10022–9932.

FOR FURTHER INFORMATION CONTACT: Karen L. Skidmore, Special Counsel (202) 272–3023; or Fran Pollack-Matz, Staff Attorney (202) 272–3024 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from either the SEC's

Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. The Trust has been organized as a Massachusetts business trust pursuant to a Declaration of Trust (the "Declaration of Trust") filed by Shawmut Bank, N.A. with the Commonwealth of Massachusetts on July 8, 1988, and has registered with the Commission as a closed-end, management investment company. The Trust has been organized for the purpose of acquiring certain loans (the "Loans") from HUD, pursuant to a loan sale agreement (the "Loan Sale Agreement"), in exchange for equity interests and proceeds of debt securities to be issued by the Trust. The Loans are bonds were issued by municipalities, special districts and not-for-profit organizations to refinance construction loans, which bonds were purchased by the predecessor agency to HUD under its Public Facilities Loan Program ("PFLP"). The PFLP was designed to assist small municipalities in the construction of public works, such as water, sewer, hospital and other public facilities. The Loans comprise substantially all of HUD's portfolio of PFLP loans (the "Portfolio").

2. The Loans will be sold by HUD in accordance with a directive issued by the United States Office of Management and Budget ("OMB") and the amended Guidelines for Loan Asset Sales, dated March 8, 1988, prepared by the Federal Credit Policy Working Group and issued by OMB (the "Guidelines").

3. The proposed transaction has been designed to implement the objectives of the Guidelines by: (a) Providing for the sale of Loans without recourse to the Federal government; (b) providing for the transfer of servicing responsibilities for the Loans to a private sector loan servicer; and (c) ensuring that interest on the Bonds issued to finance the acquisition of the Loans by the Trust (and thus, in effect, the future interest payments on the Loans themselves) will be subject to full Federal income tax.

4. The proposed transaction that is the subject of this application involves the issuance of securities by the Trust to finance the Trust's purchase of the Loans from HUD. In general, in order to be eligible for selection from HUD's Portfolio, the Loan must not have been a "Delinquent Loan" as of the Cut-off Date specified in the Prospectus (the "Cut-off Date"). A "Delinquent Loan" will be defined in the Prospectus and the Indenture as a Loan which is more than 6 or 12 months (to be determined prior to pricing) past due in any scheduled payment (or rescheduled payment) of principal or interest as of the date of determination. The Trust, however, may include a limited amount (not to exceed 10 percent of its assets as of the Closing Date) of Loans that are Delinquent Loans as of the Cut-off Date but subject to the Trust's specifically representing and warranting that such Delinquent Loans will become current before the second anniversary of the Closing Date. If such Delinquent Loans fail to become current as warranted, HUD will be obligated under the Loan Sale Agreement to perform one of the remedies discussed below with respect to a "Non-Conforming Loan," that is, a Loan not complying with certain warranties made by HUD under the Loan Sale Agreement. Pursuant to the Loan Sale Agreement between the Owner Trustee and HUD, HUD will sell the Loans to the Trust in exchange for: (a) The proceeds from the issuance of certain debt securities (the "Bonds"); and (b) two classes of certificates evidencing ownership of beneficial interests on the net assets of the Trust (the "Certificates").

5. Under the Loan Sale Agreement, HUD makes certain warranties about the Loans as of the Closing Date. Upon breach of certain warranties and notice thereof and satisfaction of the requirements set forth in the Loan Sale Agreement within the applicable warranty period ("Warranty Period"), (generally, two years from the Closing Date), HUD will promptly either (1) cure the breach, (2) substitute a Loan for a Non-Conforming Loan, (3) make certain cash payments, or (4) purchase Bonds in the open market for surrender and cancellation, or any combination of the foregoing. HUD may elect to defer any such performance until such time, if any, as the subject Non-Conforming Loan becomes a Delinquent Loan. Until a Non-Conforming Loan becomes a Delinquent Loan, the Bondholders will continue to benefit from the principal and interest payments on the Loan. However, if the Non-Conforming Loan becomes a Delinquent Loan, HUD must perform its obligations under the Loan Sale Agreement and such obligations are backed by the full faith and credit of the United States. *See* the application for a fuller description of these remedies. Notice will be given by the Bond Trustee and the Owner Trustee to the Bondholders and the Certificateholders of any substitution of Loans, as described in the application, within five days after such substitution as contemplated by section 26(a)(4)(B) of the 1940 Act. With the exception of such limited remedies and the advances in connection with interest deferments, the Loans will be transferred to the Trust without recourse to HUD.

6. The Trust will issue separate maturities of collateralized sequential pay Bonds in an aggregate principal amount currently estimated in a range up to $300 million expected to be issued at a discount to yield net proceeds in a range up to $200 million. The Bonds will be issued pursuant to an indenture (the "Indenture") between the Owner Trustee and Chemical Bank, as bond trustee (the "Bond Trustee"). The Bond Trustee and Owner Trustee and any successors thereto will be banks and will be required to have at all times an aggregate capital, surplus and undivided profits of not less than $50,000,00. The date on which such transactions will occur is referred to herein as the "Closing Date."

7. The Bonds will be registered under the Securities Act of 1933 (the "1933 Act") pursuant to a registration statement (the "Registration Statement") on Form N–2. the Indenture will be qualified under the Trust Indenture Act of 1939 ("1939 Act"). The Bonds will be rated in the highest rating category ("AAA" or "Aaa") by two nationally recognized statistical rating organizations ("Rating Agencies") not affiliated with the Trust. The Trust will offer the Bonds through the underwriters (the "Underwriters") named in the prospectus included in the Registration Statement (the "Prospectus").

8. The Bonds are expected to be issued in separate maturities. Each maturity of Bonds will have a fixed interest rate and stated maturity date and will be amortized on each Payment Date in a manner such that, assuming principal of and interest on the Loans is paid when due, the overcollateralization levels specified in the Indenture will be maintained (to the extent of available moneys therefor under the Indenture). Interest on the Bonds will be payable on each semi-annual Payment Date. Aggregate principal amounts, initial public offering prices, maturity dates and interest rates of each maturity will be determined in light of market conditions at the time of the pricing of the Bonds so as to achieve the highest return to HUD both in terms of net proceeds of the Bonds and the value of the Certificates. The Bonds are currently expected to be issued at substantial discounts below par if it is determined at the time of pricing of the bonds that the sale of the Bonds with original issue discount will reduce the yield on the Bonds below the yield which the Bonds

would bear if issued at par. The Bonds will not be subject to redemption prior to maturity other than through amortization of principal as described above.

9. The Certificates will evidence ownership of beneficial interest in the net assets of the Trust and accordingly will entitle holders to shares of the cash flow of the Trust after the funding or certain funds and payment of all principal and interest payments on the Bonds then due. Such distributions to the Certificateholders shall be made semi-annually on or immediately following each Payment Date in respect of the Bonds. It is expected that HUD initially will retain the Certificates.

10. For certain tax reasons, described in the application, the Certificates will be issued by the Owner Trustee in two classes with different rights as to distributions. On each date on which the Owner Trustee makes a distribution to the Certificateholders one class of Certificateholders will receive a specified return on the Certificates' value assigned to that Class prior to distributions to the other class. The Certificates will be transferable, subject to the limitations described below and in the application. The Certificates will not be redeemable at the option of the holders. The holders of the Certificates will not be liable for payment of principal of, or interest on, the Bonds or for any other liabilities of the Trust.

11. The Owner Trustee will contract with General Electric Capital Corporation (formerly, General Electric Credit Corporation) (the "Servicer") as servicer of the Loans under a servicing agreement ("Servicing Agreement"). Under the Servicing Agreement, the Servicer will administer, service, collect and enforce the Loans on behalf of the Trust. The Servicing Agreement will not permit the Servicer to resign so long as any Loans are outstanding except upon a determination that is duties thereunder are no longer permissible under applicable law or if the Servicer has obtained a successor Servicer satisfactory to the Bond trustee and the Owner Trustee, the appointment of which will not cause the rating on the Bonds to be reduced. The fees of the Servicer will be disclosed in the Prospectus. The Owner Trustee will assign the Loans and its rights under the Loan Sale Agreement and the Servicing Agreement to the Bond Trustee pursuant to the Indenture as security for the Bonds.

12. The Indenture will provide for three Funds, the Revenue Fund, the Expense Fund the Liquidity Fund (the "Funds"), and for one account, the Breach Account. The Revenue Fund, to be held by the Bond Trustee under the Indenture as security for the Bonds, will be credited with all payments due on the Loans and received after the Cut-Off Date specified in the Loan Sale Agreement, net of the fees of the Servicer, all earnings on the Investment Agreement (described below and in the application), and any required transfers from the Expense Fund, the Liquidity Fund and the Breach Account. Amounts credited to the Revenue Fund will be applied on each Payment Date in the following order of priority: first, to pay principal at maturity of and interest on the Bonds due on such Payment Date; second, to pay scheduled Administrative Expenses ("Administrative Expenses" will include fees and expenses of the Bond Trustee, the Trust's auditors and accountants, and of the Owner Trustee, and Servicer Advances (defined below) not previously paid) then due and not previously paid from the Expense Fund; third, to fund the Expense Fund to the required level set forth in the Indenture; fourth, the fund the Liquidity Fund to the required level set forth in the Indenture; fifth, to amortize principal of the Bonds in the manner described in paragraph 8; and sixth, to pay Administrative Expenses not paid pursuant to the second application of funds described above. Any remaining amounts in the Revenue Fund on such Payment Date (other than certain specified amounts received prior to such date) will be promptly paid over by the Bond Trustee to the Owner Trustee for distribution to the Certificateholders after payment of any expenses of the Trust not payable by the Bond Trustee as Administrative Expenses (including any indemnities payable by the Trustee).

13. The Expense Fund may be available to be used on a monthly basis for reimbursement of advances made by the Servicer for the purpose of collecting amounts due on the Loans or for the protection of collateral that is security for any Loan ("Servicer Advances") and, on each Payment Date, to pay scheduled payments on the Bonds, as necessary, and Administrative Expenses. The Liquidity Fund, as necessary, will be used to pay scheduled payments on the Bonds and to pay scheduled Administrative Expenses not previously paid form the Expense Fund or the Revenue Fund. The Breach Account will hold cash received from HUD with respect to certain defective Loans. Amounts in the Breach Account will be available to pay any shortfalls in scheduled payments on such Loans up to the Cash Value of the Breach (as defined in the application) for such Loans. Any amounts remaining in the Breach Account after all Bonds have been paid in full will be transferred to HUD.

14. In order to provide for earnings on the Funds referred to above without creating investment discretion in the Bond Trustee, the Indenture will require the Owner Trustee and the Bond Trustee prior to the issuance of the Bonds, to enter into an investment agreement (the "Investment Agreement") with a financial institution. Such institution will be (a) or a national bank, a banking institution organized under the laws of any State or the District of Columbia the business of which is substantially confined to banking and is supervised by the State banking commission or similar official, or a foreign bank subject to substantially the same supervision under the International Banking Act of 1978; (b) an insurance company, subject to the supervision of the insurance commissioner, bank commissioner or any agency or officer performing like functions, of any State of the District of Columbia; or (c) a United States government agency or government sponsored corporation, in each case, whose obligations are rated in, or eligible to be pledged as collateral for securities rated in, the highest rating category ("AAA" or "Aaa") by the same Rating Agencies which rate the Bonds. The Trust anticipates entering an Investment Agreement with Morgan Guaranty Trust Company of New York or another entity acceptable to the Rating Agencies and not affiliated with any parties to the transaction ("Provider").

15. The Investment Agreement will have a term equal to the final maturity of the Bonds. The Indenture will require the Bond Trustee to invest under the Investment Agreement all amounts held under the Indenture and credited from time to time to the Funds. The Investment Agreement will bear a fixed or variable interest rate or rates specified in the Investment Agreement and disclosed in the Prospectus. If the Investment Agreement bears a variable interest rate or rates, such rate or rates will be pegged to a published financial index specified in the Indenture and disclosed in the Prospectus. At no time, however, will such variable rate or rates be permitted to fall below the weighted average rate on the Loans.

16. The Investment Agreement will not be terminable or assignable by the Provider, except that if the Provider is a bank which is a principal subsidiary of a bank holding company, the Provider may be permitted to assign its obligations under the Investment Agreement to its parent corporation if the long-term debt rating of the parent

by each Rating Agency rating the Bonds is at least as high as that or the Bonds (*i.e.*, AAA or Aaa, the same as the original Provider). The Investment Agreement will terminate if the Bond Trustee or the Owner Trustee should inform the Provider that any Rating Agency then rating the Bonds has stated that the continuation of the Investment Agreement with that Provider will adversely affect such Rating Agency's rating of the Bonds. In the event of such termination, the Bond Trustee will enter into a substitute investment agreement that would not result in a reduction in the rating of the Bonds, if such an agreement can be procured. Any such substitute agreement would be permitted only with the financial institutions described above. If the Investment Agreement is with an entity other than a United States government agency or government sponsored corporation, in the event that the amounts invested in the Investment Agreement exceed the limits required to maintain the Trust's status as a regulated investment company under the Internal Revenue Code, the Bond Trustee will be required to invest any such excess amounts in one or more additional investment agreements meeting all of the requirements of a substitute agreement specified above or, if no such additional investment agreement can be procured, in the kinds of investments described in paragraph 17 for instances when no substitute agreement can be procured.

17. If no such substitute investment agreement can be procured, amounts in the Funds will be invested by the Bond Trustee only in (a) obligations issued by the United States (and supported by its full faith and credit); or (b) repurchase agreements with respect to such obligations and overcollateralized on a basis that will not result in a reduction in the ratings of the Bonds. All such investments must mature before the next scheduled distribution date and will respect to any amount on deposit in the Expense Fund for reimbursement of advances made by the Servicer, such investments must mature monthly. In addition, after final payment of the Bonds, any amounts paid over by the Bond Trustee to the Owner Trustee for distribution to Certificateholders may be invested, pending distribution, in the same investments described above any any demand or time deposit or certificate of deposit which is fully insured by the Federal Deposit Insurance Corporation.

18. The Bonds will not be redeemable at the option of the holders and, except in the event of a default on the Bonds followed by an acceleration, holders of the Bonds will not be entitled to compel the liquidation of the Loans in order to redeem the Bonds prior to maturity.

19. At the date of issuance of the Bonds, the principal balance of the Bonds will not exceed the Aggregate Collateral Value of the Loans (as defined in the application). To the extent permitted by the Rating Agencies, Aggregate Collateral Value will include a Loan after it becomes Delinquent, as defined in the Prospectus. The Rating Agencies will take into account the inclusion of Delinquent Loans in determining the appropriate level of overcollateralization and of required funding of the Liquidity Fund. When the maximum overcollateralization level is determined at the pricing of the Bonds, the Applicant undertakes to amend the application in order to inform the SEC of such maximum level. It is expected that the level of overcollateralization will be no less than 104% and no more than 120%, which is the level of overcollateralization required to obtain the highest investment grade rating on the Bonds.

20. Neither the holders of the Certificates, the Owner Trustee nor the Bond Trustee will be able to impair the security afforded by the Loans to the Holders of the Bonds. Without the consent of each Bondholder to be affected, the Indenture may not be amended so as to: (a) Change the stated maturity of and Bond; (b) reduce the principal amount of or the rate of interest on any Bond; (c) change the priority of payment on any maturity of Bonds; (d) impair or adversely affect the Loans securing any maturity of Bonds; (e) permit the creation of a lien ranking prior to or on a parity with or subordinate to the lien of the Indenture with respect to the assets pledged under the Indenture; or (f) otherwise deprive the Bondholders of the security afforded by the lien of the Indenture. The sale of the Certificates by HUD or any other holder will not alter the payment of cash flows under the Indenture, including the amounts to be deposited in the Funds or Breach Account created pursuant to the Indenture to support payments of principal of and interest on the Bonds.

21. Conflicts of interest, if any, between the Bondholders and the holders of the Certificates in the Trust are addressed in the following ways:

(a) The Indenture will subject the Loans, the various Funds and the Breach Account held under the Indenture, and the Investment Agreement to a first priority perfected security interest in favor or the Bond Trustee for the benefit of the Bondholders. The Indenture will further provide that no amounts may be released from the lien of the Indenture to be remitted to the Owner Trustee (or the holders of Certificates) on any Payment Date until: (i) The Bond Trustee has made the scheduled payment of principal of and interest on the Bonds on such Payment Date; (ii) all Administrative Expenses then due have been paid; (iii) any required deposits have been made to the Expense Fund, the Liquidity Fund and the Breach Account; and (iv) the Bond Trustee has paid principal of the Bonds on such Payment Date in the manner described in paragraph 8.

(b) The holders of the Certificates will be entitled to receive current distributions representing the residual payments on the Loans in accordance with the terms of the Indenture and the Declaration of Trust. Except for such rights to receive residual payments, the holders of the Certificates will have no rights in, or discretionary control over, the Trust while the Bonds are outstanding other than the right to replace the Owner Trustee for breach of fiduciary duty, willful misfeasance, bad faith, gross negligence or reckless disregard of its duties under the Declaration of Trust and to replace the Trust's auditors with respect to the responsibilities of the auditors other than those arising under the Indenture. The holders of the Certificates will have the right to replace the Servicer for breach of the Servicing Agreement only after all Bonds have been paid.

(c) The Bonds will only be issued if they have been rated in the highest rating category by two Rating Agencies not affiliated with the Trust.

22. The Trust expects to make certain payments to cover various costs to be paid or reimbursed at the closing of the sale of the Bonds and Certificates, as well as various ongoing costs and expenses, all such costs and expenses being fully described in the application and Prospectus. Should the Trust expect to make any other payments not described in the application, Applicant will submit an amendment to this application to the Commission requesting that those fees be exempted from the provisions of section 26(a)(2) of the 1940 Act and stating that the amounts thereof will be disclosed in the Prospectus.

23. Upon payment of the Bonds in full and the discharge of the Indenture, any remaining assets of the Trust held by the Bond Trustee will be transferred to the Owner Trustee. Any cash assets will then be distributed to the holders of the Certificates. Any remaining Loans will be retained by the Owner Trustee and

cash flows from the Loans will be distributed by the Owner Trustee to the holders of the Certificates at least monthly on a pass-through basis after payment of the fees and expenses of the Owner Trustee, the Servicer and the Trust's accountants and auditors. Upon final payment of the Loans, any remaining assets of the Trust will be distributed to the Certificateholders and the Trust will be terminated.

24. In order to allow the Trust to register with the Commission as a closed-end management investment company, exemptive relief is required from the provisions of the 1940 Act specified below.

Applicant's Legal Conclusions

1. Section 10(h)

Section 10(h) of the 1940 Act applies certain of the restrictions of sections 10 (a), (b) and (c) of the 1940 Act to the board of directors of the depositor of a registered management company which is an unincorporated company not itself having a board of directors, as well be the case with the Trust. Hud, by conveying the Loans to the Trust, might be deemed to be the depositor of the Trust. However, HUD, as a Federal department in the Executive Branch, has no board of directors nor can it elect or appoint a board of directors. Except for its limited rights as a Certificateholder, HUD would not have any discretion over the administration of the Trust under the Declaration of Trust and the Indenture. Moreover, the Trust will operate as a passive entity without the traditional methods of management and investment.

2. Section 14(a)

Section 14(a)(1) of the 1940 Act provides that no investment company shall make a public offering of securities of which such company is the issuer unless such company has a net worth of at least $100,000. On the date of issuance of the Bonds and the Certificates, the aggregate scheduled payments of principal of and interest on the Loans plus the amount on deposit in the Funds will exceed the aggregate scheduled payments of principal of and interest on the Bonds by substantially more than $100.000. Thus, the net worth of the Trust will exceed $100,000 on the date of issuance of the Bonds and the Certificates. Prior to the issuance and delivery of the Bonds to the Underwriters, the Underwriters will agree to purchase the Bonds subject to customary conditions of the closing. The Underwriters will not be entitled to purchase less than all of the Bonds. Accordingly, either the offering will not be completed at all or the Trust will have a net worth in excess of $100,000 on the date of issuance of the Bonds and the Certificates Based on the determination of the independent evaluator, it is not anticiated that the net worth of the Trust will fall below the minimum level until the Bonds and the Certificates have been retired.

3. Section 16(a)

Section 16(a) of the 1940 Act requires that no peson shall serve as director of a registered investment company unless elected to that office by the holders of the outstanding voting securities of such company. The powers of the Bond Trustee and the Owner Trustee are so circumscribed that neither the Bond Trustee nor the Owner Trustee should be deemed a director within the meaning of section 2(a)(12) of the 1940 Act. Election or subsequent ratifications of the Owner Trustee or the Bond Trustee are not necessary in the public interest or to protect investors, and the additional expense for the Trust is not justified. The Trust will be a passive entity that will not require investment management. Similar to a unit investment trust, neither the Owner Trustee nor the Bond Trustee will be authorized to manage the Trust's portfolio of Loans. The activities of the Owner Trustee will be carefully limited to receipt of payments from the Bond Trustee while the Bonds are outstanding and of payments on the Loans thereafter and to making current distributions to Certificateholders of the amounts received. The Bond Trustee will also be required to mail a report, based information supplied by the servicer, to Bondholders, as described in Condition 5 below, which will enable Bondholders to determine the extent to which any outstanding Deliquent Loans may affect the ability of the Trust to make payments of interest and principal on the Bonds in accordance with the Bonds in accordance with the provisions of the Indenture. Moreover, the Trust has agreed to comply with section 26 of the 1940 Act as if it were a unit investment trust, including the requirements in that section regarding entities acting on behalf of the Trust and the limitations on expenses set forth therein. Finally, exemption from section 16(a) of the 1940 Act is necessary in light of the exemption requested from section 18(i) of the 1940 Act discussed below to permit the issuance of only non-voting securities.

4. Section 17(a)

An exemption from section 17(a) of the 1940 Act is sought to permit the Trust to acquire Loans from HUD in exchange for the Certificates and the proceeds of the Bonds issued by the Trust, to repay HUD if HUD advances funds upon a deferment of interest payment granted to the borrower by HUD, and to effect substitution for Non-Conforming Loans or make cash payments to the Trust in lieu of such substitutions.

Section 17(a) of the 1940 Act prohibits specified transactions between certain persons related to a registered investment company and such investment company. HUD would otherwise be prohibited from entering into the above transactions under section 17(a) of the 1940 Act because HUD may either be considered an "affiliated person" under section 2(a)(3) of the 1940 Act or a "promoter" under section 2(a)(30) of the 1940 Act.

Section 17(a) of the 1940 Act specifically excepts sales which involve securities deposited with the trustee of a unit investment trust. Although the Trust is not a unit investment trust, its structure is very similar to one in that both entities involves the deposit into a trust by a related person of a predetermined fixed portfolio of securities. Moreover, the transactions would meet the requirements of section 17(b) of the 1940 Act, the provision granting the Commission authority to exempt transactions under section 17(a) of the 1940 Act, in that the terms of the exchange will be reasonable and fair and do not involve overreaching on the part of any person concerned.

In order to establish the reasonableness and fairness of the price of the Loan received by HUD, HUD's financial advisor, PaineWebber Incorporated, will advise HUD that the proceeds of the Bonds, less transaction costs, plus the Certificates representing the residual interest in the Trust, represent a fair price for the Loans. In order to establish that the price paid by the Trust for the Loans is reasonable and fair to the Trust, the Trust will retain an independent, qualified evaluator (not including any Underwriters for the Bonds or the Certificates) which will determine that the consideration to be paid by the Trust for the Loan is reasonable and fair.

HUD is also seeking an exemption from 17(a) because HUD has statutory authority to permit the borrower on a Loan to defer interest payments for certain periods upon certain terms and after the making of certain findings by HUD. HUD will be obligated to advance to the Trust interest payments which would be due but for the deferral. The Trust, in turn, will be obligated to reimburse HUD for the aforesaid

advances (together with interest accrued thereon pursuant to the terms of the deferral) in accordance with the borrower's obligation to repay deferred interest under the terms of the deferral. This is intended to allow Bondholders to receive interim cash flows without altering whatever credit risk the Bondholders have assumed by purchasing the Bonds. Any institutional purchaser of the Certificates will have the sophistication and bargaining power necessary to take into account whatever risk is assumed by the Certificateholder in the price it is willing to pay HUD for the Certificates.

Any cash payments made in lieu of Loan substitutions must be in amounts adequate to replace the cash flow from the Non-Conforming Loans or, in cases where the defects affect collateral for Loans, to replace the defective collateral. If HUD elects to surrender Bonds in Lieu of the foregoing remedies, HUD must purchase Bonds with a weighted average life as long as practicable as the dollar weighted average life of the Loans as to which any breach has occurred. As a condition to delivery of the Bonds, HUD must also deliver a statement from the auditors confirming that (1) the aggregate collateral value is at least equal to the aggregate outstanding principal amount of the Bonds and (2) schedule payments on the Loans (other than the Loan or Loan as to which any breach has occurred), together with reinvestment income thereon, is sufficient to pay interest on the Bonds on each date when such payment is due and to retire each class of Bonds no later than its scheduled maturity. Consequently, provision for such payment will provide protection for Bondholers, in the event defects in the Loans are identified, at least as great as the protection afforded by the other remedies available to the Trust under the Loan Sale Agreement.

5. Section 17(d)

An exemption is being sought from Section 17(d) of the 1940 Act to permit the Trust, in the event HUD is deemed an "affiliated person" or "promoter" under the 1940 Act, to effect substitutions of conforming for Non-Conforming Loans or to surrender Bonds or make cash payments in lieu thereof or to repay HUD for any advances upon a deferment of interest payments. Applicants state that these transactions will not be on a basis different from or less advantageous than that of other participants insofar as the Trust will be the only participant on one side of the transaction dealing with HUD as the participant on the other side of the transaction. An exemption is also being sought from section 17(d) of the 1940 Act to permit the Trust, in the event that GECC is deemed an "affiliated person" of a "principal underwriter" under the 1940 Act, to enter into a servicing agreement with GECC. Section 17(d) makes it unlawful for any affiliated person of or principal underwriter for a registered investment company or any affiliated person of such person or principal underwriter to effect a transaction in which an investment company is a joint or joint and several participant in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by such investment company on a basis different from or less advantageous than that of such other participant.

In the proposed transaction, Kidder, Peabody & Co. Incorporated ("Kidder Peabody"), as one of the co-managers of the proposed offering of the Bonds, could be deemed a "principal underwriter". Both Kidder Peabody and GECC are subsidiaries of General Electric Financial Services, Inc., therefore, they are under common control. Although GECC could be deemed an affiliated person of a principal underwriter, Kidder Peabody and GECC are separately managed. As described in the application, GECC has been selected as the servicer because of a competitive bid and non-quantitative factors such as ability and related experience. The Trust believes, among other things, that the level of services proposed to be provided by GECC represents the most appropriate and highest quality of services being offered by qualified candidates, and the proposed fees (including GECC's absorption of start-up costs) represent the lowest cost to the Trust consistent with the extent and quality of service being offered. Consequently, permitting GECC to act as servicer for the Trust would be consistent with the provisions, policies and purposes of the 1940 Act, and the Trust would not be treated different from or less advantageous than the other participants.

6. Section 18(a)

Section 18(a) of the 1940 Act prohibits a registered closed-end investment company from issuing any class of senior securities unless certain asset coverage requirements are met. The Trust will have an asset coverage ratio immediately after the sale of the Bonds and Certificates currently expected to be at least 4 percent and no more than 120 percent. In addition, the Trust will receive advances from HUD upon deferral of interest payments by HUD and repay such advances. The proposed transaction, in view of the overcollateralization of the Trust and the nature of the investors in the Certificates, adequately protects against the dangers of excessive leveraging, the concern underlying section 18(a) of the 1940 Act. As a condition to the issuance of the Bonds, the Trust will obtain a determination from an independent, qualified evaluator that the aggregate scheduled payments on the Loans plus the initial deposit in the Funds and reinvestment earnings will exceed the aggregate scheduled payments of principal and interest on the Bonds by an amount adequate to provide for payment of the Bonds in light of the payment terms and past experience on the Loans. Moreover, the Certificates may only be sold to sophisticated institutional investors having sufficient expertise to evaluate the risks involved in acquiring either Class of Certificates.

7. Section 18(c)

The Applicant is seeking an exemption from section 18(c) of the 1940 Act to permit the Trust to issue the Bonds in several maturities. Section 18(c) of the Act makes it unlawful for any registered investment company to have more than one class of senior security of debt or equity. Here, each maturity of Bonds will be secured by collateral equally and ratably with every other maturity and all maturities will have the benefit of the same covenants and rights on default. Moreover, no action by the Owner Trustee or the Certificateholders can affect the timely payment of Bonds, and no action by the Bondholders of one maturity can affect the timely payments of Bonds of any other maturity. All of the assets of the Trust will be pledged to the Bond Trustee and the Owner Trustee will be permitted to borrow against the assets of the Trust. Further, Loans will not be permitted to be removed from the Trust or substituted for other assets, except under limited circumstances.

8. Section 18(i)

Under section 18(i) of the 1940 Act, a registered investment company may not issue stock which does not have equal voting rights with every other class of stock. The Trust will operate essentially as a unit investment trust, to which section 18(i) of the 1940 Act does not apply. Given the lack of discretion vested in the Certificateholders and the Owner Trustee, voting rights would have very little actual effect on the operation of the Trust and would not enhance investor protection.

9. Section 26

Applicant has agreed that it will be subject to section 26 of the 1940 Act (with certain exceptions) as though it were a unit investment trust within the meaning of section 4(2) of the 1940 Act. With respect to sections 26(a)(2) (B) and (C), the Applicant has requested to be able to pay certain costs and expenses described in the application. The Applicant believes that the payment of those costs and expenses will be fair and reasonable in light of the requirements of the offering and sale of Bonds and the ongoing servicing requirements for the Loans. To the extent any administrative costs and fees are determined on the basis of a percentage of outstanding Bonds, the Applicant has specifically considered the fairness of such percentage formula under the Indenture and that the practice of determining fees in this manner is fair within the meaning of section 26 of the 1940 Act. The Applicant further believes that the granting of the Order sought by this application will satisfy the provisions of section 26(b) of the 1940 Act relating to substitution of collateral to the extent Loan substitution is made as described in the application.

10. Section 32(a)

Sections 32(a)(1) and 32(a)(3) of the 1940 Act require the independent public accountant filing the investment company's financial statements to be selected annually by a vote of a majority of the board of directors and ratified annually by a majority of the voting securities of the investment company. The Trust, however, will not have voting securities. The initial auditors will be selected and disclosed in the Prospectus prior to the issuance of the Bonds and Certificates. Both the Bond Trustee and the Owner Trustee will have the right to remove the auditors for the Trust. Moreover, the Trust will not engage in any investing or reinvesting of securities, except to a limited extent. As a result, the Trust's financial statements will be primarily records of receipts and distributions, and audits of the Trust's financial statements will be straightforward and will not involve complex auditing and accounting principles. Therefore, the additional expense of ratification of the auditors would not be justified given the nature of the Trust.

11. Section 6(c)

For the reasons stated above, the requested exemptions are consistent with the section 6(c) standards. The relief requested is appropriate in the public interest, because: (a) The Trust's activities will promote the public interest by permitting HUD to sell its loan assets pursuant to a directive from the United States Office of Management and Budget and will provide investors with a highly rated security; (b) the Trust may be unable to proceed fully and in a timely manner with its proposed activities in the uncertainties concerning the applicability of the above sections are not removed; and (c) the activities of the Trust are not the types of activities intended to be prevented by the 1940 Act.

Applicant's Conditions

Applicant agrees that if the requested order is granted it will be expressly conditioned on the following conditions:

A. Conditions Relating to the Bonds

(1) The Bonds will be registered under the 1933 Act. The Indenture will be qualified under the 1939 Act.

(2) The Loans, the Funds, the Breach Account and the Investment Agreement securing the Bonds ("Collateral") will be held by the Bond Trustee. The Bond Trustee may not be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of the Trust. The Bond Trustee will be provided with a first priority perfected security interest in the Collateral. The Servicer will not be affiliated with either the Bond Trustee or the Owner Trustee.

(3) The initial collateral for the Bonds will consist only of the Loans and any moneys initially deposited to the credit of the Funds and invested in the Investment Agreement. No Loans may be released from the liens of the Indenture prior to the payment of the Bonds (except upon the acceleration of defaulted Loans) or substituted except pursuant to the limited substitution obligations of HUD under the warranties of HUD contained in the Loan Sale Agreement described in the application. Any such substitute collateral may consist only of Loans and will: (a) Be of equal quality as the Non-Conforming Loans being replaced in that they will be covered by the warranties of HUD contained in the Loan Sale Agreement (subject to the limitation on HUD's obligation to replace Non-Conforming Loans notified to it during the Warranty Period) and will be selected by HUD in a manner so as to not adversely affect the rating of the Bonds; (b) have equal or greater principal amounts and cash flow as the Non-Conforming Loans being replaced, subject to the cash payment option and credit to HUD for prior substitutions of Substitute Loans with cumulative payments in excess of the Non-Conforming Loan being replaced; and (c) meet the conditions set forth in paragraph (2) above. The replacement of such Substitute Loans for Non-Conforming Loans will not affect the level of collateralization on which the original rating or ratings on the Bonds were based or affect the rating or ratings on the Bonds. If HUD elects to purchase Bonds in the open market and surrender such Bonds in lieu of other remedies for breach of warranty, HUD will purchase Bonds with a weighted average life as long as practicable as the weighted average life of the Loan or Loans as to which such breach of warranty occurred. In surrendering any such Bonds, HUD must also deliver a statement from the auditors confirming that (i) the Aggregate Collateral Value calculation (excluding the Loan or Loans as to which the breach of warranty occurred) is at least equal to the then outstanding principal amount of Bonds and (ii) the scheduled payments on the Loans (excluding the Loan or Loans as to which the breach of warranty occurred), together with reinvestment income thereon, is sufficient to pay interest on the Bonds on each date when such payment is due and to retire each class of Bonds no later than its stated maturity.

(4) The Bonds will be rated in the highest bond rating category by two Rating Agencies that are not affiliated with the Trust. The Bonds will not be considered "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

(5) On each Payment Date, the Bond Trustee will mail to each Bondholder a written report containing the following information as of the end of the immediately preceding Payment Date: (i) The aggregate principal amount of each Class of Bonds outstanding, (ii) the respective amounts credited to each of the Funds, (iii) the amount of any draw on any Fund, (iv) the respective amounts of the Expense Fund Requirement and the Liquidity Fund Requirement, (v) two calculations of Aggregate Collateral Value, one calculation including Delinquent Loans and one calculation excluding Delinquent Loans, (vi) the respective ratios which the two Aggregate Collateral Value calculations described in clause (v) bear to the then aggregate outstanding principal amount of the Bonds (which ratios will provide Bondholders with information as to the extent of then existing overcollateralization), (vii) a schedule indicating the number and aggregate principal amount of Delinquent Loans and delinquency periods aggregated by years, and (viii) the amount of funds released from the Revenue Account to

make distributions to holders of Certificates. With respect to the calculations under clauses (v) and (vi) above, the Bond Trustee will receive such information from the Servicer with respect to Delinquent Loans as will enable it to generate the information specified in such clauses. Such report will also state, based on the information set forth therein, whether or not scheduled payments on the Loans (both including and excluding Delinquent Loans), together with reinvestment income thereon, will be sufficient to pay interest and principal on the Bonds in accordance with their terms. Copies of each such report will be provided to the Owner Trustee who will distribute them to Certificateholders. In addition, no less often than annually, an independent public accountant will audit the financial statements of the Trust. Upon completion, copies of the auditor's reports will be provided to the Bond Trustee and the Owner Trustee and will be made available to the Bondholders and the Certificateholders.

(6) At the time of the deposit of the Collateral with the Trust, the scheduled payments to be received by the Bond Trustee on the Collateral will be more than sufficient to make all payments of principal of and interest on the Bonds. The Collateral will pay down as the Loans are repaid, but will not be released from the lien of the Indenture prior to the payment of the Bonds (except upon the acceleration of defaulted Loans and substitutions of Non-Conforming Loans).

B. Conditions Relating to the Certificates

(1) The Certificates will be offered and sold to sophisticated institutional investors pursuant to private placements exempt from the registration requirements of the 1933 Act under section 4(2) thereof. Such institutional investors may include one or more banks, savings and loan associations, insurance companies, pension funds and other large institutional investors (*i.e.*, having assets of not less than $100,000,000) that will have such knowledge and experience in financial and business matters so as to be capable of evaluating the risks of the purchase of the Certificates ("Eligible Investors"). (Any Mutual Funds which may purchase Certificates will continue to be required to satisfy themselves that purchase of such Certificates complies with the provisions of section 12(d)(1) of the 1940 Act.)

(2) Sales of the Certificates will be to a limited number, not exceeding 100, of sophisticated institutional investors. Each purchaser of Certificates will be required to represent that it is acquiring its Certificates for investment for its own account and not as nominee for undisclosed investors and to agree that it will not resell its Certificates except to other Eligible Investors pursuant to private placements subject to the same representation and agreement and subject to the above limitation on the number of Certificateholders. (The Declaration of Trust will provide that the Owner Trustee may not register any transfer of Certificates if, following such transfer, the number of Certificateholders would exceed one hundred.)

(3) Neither the Trust nor any Certificateholder will be affiliated with the Bond Trustee. No holder of a controlling interest in the Trust (as such term is defined in Rule 405 of the 1933 Act) nor the Trust, will be affiliated with either (a) any custodian which may hold the Collateral on behalf of the Bond Trustee; or (b) any statistical Rating Agency rating the Bonds.

(4) The Certificates will not be redeemable at the option of the holders.

C. Other Conditions

(1) All administrative fees and expenses in connection with the administration of the Trust will be paid or provided for in a manner satisfactory to each Rating Agency rating the Bonds. The Trust will provide for the payment of administrative fees and expenses incurred in connection with the issuance of the Bonds and the administration of the Trust by the following methods:

(a) The Expense Fund will be established with the Bond Trustee under the Indenture to provide for the payment of such fees and expenses. Such fees will be either fixed amounts or will be determined as a percentage of the aggregate outstanding principal amount of the Bonds, or a combination of both, in any case to be determined prior to the establishment of the Expense Fund. Thereafter, the Bond Trustee will look solely to the Expense Fund for the payment of Administrative Expenses and, to the extent there are not sufficient moneys in the Expense Fund, then to the Revenue Fund. The procedure used to calculate the anticipated level of fees and expenses will provide for funds sufficient to pay such fees and expenses. To the extent any such fees are determined on the basis of a percentage of outstanding Bonds, the Applicant has specifically considered the fairness of such percentage formula under the Indenture and that the "standard industry practice" of determining fees in this manner is fair within the meaning of section 26 of the 1940 Act.

(b) The Bonds will be secured by the Collateral, the value of which is in excess of the amount necessary to make payments of principal and interest on the Bonds, and such excess or a portion thereof will be applied to the payment of such fees and expenses, and may be used in combination with the other method described above. The anticipated level of fees and expenses will be more than adequately provided for by the above methods.

(2) Applicant agrees that the Trust will comply with the provisions of section 26 of the 1940 Act as though it were a unit investment trust within the meaning of section 4(2) of the 1940 Act, provided that for purposes of sections 26(a)(4) (A) and (B) of the 1940 Act, the Bond Trustee and the Owner Trustee shall perform the recordkeeping and notice responsibilities of the depositor or its agent as provided therein, and the requirements of section 26(a)(2) (B) and (C) shall not prevent the Trust from paying certain expenses described in the application.

(3) The Owner Trustee will be required under the Declaration of Trust, and, to the extent stated in the application, the Bond Trustee will be required under the Indenture, to monitor compliance by the Trust with the requirements of the 1940 Act and to fulfill the Trust's ongoing obligations under the 1940 Act including, without limitation, the filings of periodic reports with the Commission as and when required by the 1940 Act.

(4) To alleviate any potential conflict of interest between the Bondholders and the Certificateholders, the Applicant further agrees that the representations in the application regarding the Certificates may be made express conditions to the requested Order.

Therefore, Applicant requests that the Commission enter an order pursuant to section 6(c) of the 1940 Act exempting the Trust from sections 10(h), 14(a), 16(a), 17 (a) and (d), 18 (a), (c) and (i) and 32(a) of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-16020 Filed 7-13-88; 10:42 am]

BILLING CODE 8010-01-M

SELECTIVE SERVICE SYSTEM

Employee Responsibilities and Conduct

AGENCY: Selective Service System.

ACTION: Notice.

Pursuant to 5 CFR 735.104(f) including the approval of the Office of Personnel Management and the Office of Government Ethics. I have adopted the regulations at 5 CFR Part 735 for application, as appropriate, to the employees and special Government employees of the Selective Service System.

Dated: July 6, 1988.

Samuel K. Lessey, Jr.,

Director of Selective Service.

[FR Doc. 88-15947 Filed 7-14-88; 8:45 am]

BILLING CODE 8015-01-M

SMALL BUSINESS ADMINISTRATION

Region VI Advisory Council; Public Meeting; Louisiana

The U.S. Small Business Administration, Region VI Advisory Council, located in the geographical area of New Orleans, will hold a public meeting, 10:00 am, on Friday, August 12, 1988, at the Small Business Administration office, 1661 Canal Street, Suite 2000, New Orleans, Louisiana, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert J. Crochet, District Director, U.S. Small Business Administration, 1661 Canal Street, Suite 2000, New Orleans, Louisiana 70112-2890—(504) 589-2744.

July 12, 1988.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 88-15989 Filed 7-14-88; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0517]

Sterling Commercial Capital, Inc.; Application for a Small Business Investment Company License

An application for a license to operate a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661. et seq.) has been filed by Sterling Commercial Capital, Inc., 175 Great Neck, New York New York 11021 (Applicant), with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1988).

The officers, directors and shareholders of the Applicant are as follows:

Name	Title or relationship	Percent of ownership
Harvey L. Granat, 28 Nassau Drive, Great Neck, NY 11021.	President, Director	12.00
Jack Kaufman, 6 Lisa Drive, Dix Hills, NY 11746.	Executive Vice President, Treasurer.	8.00
Fred Wilpon, 100 Sheep Lane, Locust Valley, NY 11560.	Director	23.10
Saul B. Katz, Valley Road, Glen Cove, NY 11542.	Director	16.86
Michael Katz, 89 Wheatley Road, Old Westbury, NY 11568.	Assistant Treasurer, Assistant Secretary, Director.	4.50
Arthur Friedman, 40 Knott Drive, Glen Cove, NY 11542.	Secretary, Director.	.56

All other shareholders none of whom will own 10 or more percent of the 34.98 outstanding stock.

The Applicant, a New York Corporation, will begin operations with $2,500,000 paid-in capital and paid-in surplus. The Applicant will conduct its activities primarily in the State of New York, but will consider investments in businesses in other areas in the United States.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later that 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L St., NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 11, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-15990 Filed 7-14-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Except as otherwise noted, renewal application are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the applicaiton number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes July 29, 1988.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC. 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW. Washington, DC.

Application No.	Applicant	Renewal of exemption
868-X	U.S. Department of Defense, Falls Church, VA.	868
3142-X	U.S. Department of Energy, Washington, DC.	3142

Application No.	Applicant	Renewal of exemption
4588-X	.....do.....	4588
5248-X	3M, New Brighton, MN.....	5248
5820-X	ICI Americas, Inc., Wilmington, DE.	5820
6117-X	Montana Sulphur & Chemical Co., Billings, MT.	6117
6296-X	American Cyanamid Co., Wayne, NJ.	6296
6296-X	Rhone-Poulenc Ag Co., Research Triangle Park, NC.	6296
6296-X	Rhone-Poulenc Inc., Monmouth Junction, NJ.	6296
6472-X	Morton Thiokol, Inc., Ogden, UT.	6472
6530-X	AGL Welding Supply Co., Inc., Clifton, NJ.	6530
6874-X	Degussa Corp., Ridgefield Park, NJ.	6874
6874-X	ICI Americas, Inc., Wilmington, DE [1].	6874
7097-X	Plant Products Corp., Vero Beach, FL.	7097
7268-X	Union Carbide Corp., Danbury, CT.	7268
7650-X	ICI Americas, Inc., Wilmington, DE.	7650
7840-X	General Dynamics Corp., Fort Worth, TX.	7840
7840-X	Weber Aircraft, Burbank, CA.	7840
8003-X	Pennwalt Corp., Buffalo, NY.	8003
8080-X	American Chrome & Chemicals, Inc., Corpus Christi, TX.	8080
8244-X	Halliburton Services, Duncan, OK [2].	8244
8273-X	TRW Vehicle Safety Systems, Washington, MI [3].	8273
8407-X	Occidental Chemical Corp., Dallas, TX.	8407
8451-X	Lockheed Missiles & Space Co., Inc., Palo Alto, CA.	8451
8451-X	U.S. Department of Energy, Washington, DC.	8451
8451-X	Honeywell, Inc., Hopkins, MN.	8451
8451-X	Boeing Aerospace, Seattle, WA.	8451
8473-X	Degussa Corp., Ridgefield Park, NJ.	8473
8526-X	Rohm & Hass Co., Philadelphia, PA.	8526
8526-X	Key Way Transport, Inc., Baltimore, MD.	8526
8555-X	Morton Thiokol, Inc., Brigham City, UT [4].	8555
8723-X	Atlas Powder Co., Dallas, TX.	8723
8723-X	Austin Powder Co., Cleveland, OH.	8723
8789-X	Turner Co., Sycamore, IL.....	8789
8870-X	Everpure, Inc., Westmont, IL.	8870
8870-X	Culligan International Co., Northbrook, IL.	8870
8878-X	Preussag Pure Metals GmbH, Langelsheim, West Germany.	8878
8891-X	BIC Corp., Milford, CT.....	8891
8920-X	Applied Companies, San Fernando, CA.	8920
8921-X	Hoover Group, Inc., Beatrice, NE.	8921
8931-X	C-I-L, Inc., North York, Ontario, Canada.	8931
8943-X	BASF Corp., Chemicals Division, Parsippany, NJ.	8943
9001-X	T.I. Chesterfield, Ltd., Derbyshire, England.	9001
9106-X	Kitty Hawk Airways, Inc., DFW INT'L Airport, TX.	9106
9180-X	M & G Tankers, Ltd., West Midlands, England.	9180
9256-X	U.S. Department of Energy, Washington, DC.	9256
9277-X	FMC Corp., Philadelphia, PA.	9277
9277-X	Rhone-Poulenc, Inc., Monmouth Junction, NJ.	9277
9277-X	Rhone-Poulenc Ag Co., Research Triangle Park, NC.	9277
9277-X	American Cyanamid Co., Wayne, NJ [5].	9277
9287-X	Shell Pipe Line Corp., Houston, TX.	9287
9296-X	Honeywell, Inc., Minneapolis, MN.	9296
9331-X	Olin Chemicals, Stamford, CT.	9331
9501-X	Hughes Aircraft Co., Los Angeles, CA.	9501
9551-X	Connie Kalitta Services, Inc., Ypsilanti, MI.	9551
9581-X	RAMP Industries, Inc., Denver, CO.	9581
9610-X	Honeywell, Inc., New Brighton, MN.	9610
9611-X	Buco Budenbender GmbH & Co., Niederndorf, West Germany.	9611
9623-X	Austin Powder Co., Cleveland, OH.	9623
9629-X	Pennwalt Corp., King of Prussia, PA.	9629
9634-X	Luxfer U.S.A., Ltd., Riverside, CA.	9634
9642-X	Allied-Signal Inc., Morristown, NJ.	9642
9646-X	U.S. Department of Defense, Falls Church, VA.	9646
9768-X	Defence Technology and Procurement Agency, Berne, Switzerland [6].	9768
9785-X	Compagnie Generale Maritime, Paris, France.	9785
9951-X	General Defense Corp., York, PA [7].	9951
9961-X	Brown Measurement Co., Inc., Kilgore, TX [8].	9961
9977-X	Hercules Aerospace Co. Magna, UT.	9977

[1] To modify exemption, to revise net contents to onemetric ton, to change box dimensions to 45x45x43½ inches and to allow for polyester lid securing straps.

[2] To authorize an additional DOT Specification marine portable tank.

[3] To authorize an alternative packaging method and an increase in the quantity of igniter composition to 1 gram.

[4] To authorize rail as an additional mode of transportation and to incorporate provisions from Approval BA-3078 into the exemption.

[5] To authorize an increase in the net weight capacity of the non-DOT Specification multiwall bag from 50 pounds to 55.1 pounds (25 Kilograms)

[6] To authorize two additional shipments of certain Class A and Class B explosives and an additional air carrier for these shipments.

[7] To authorize type explosive projectiles (m549 155mm).

[8] To reissue an exemption, originally issued on an emergency basis, that authorizes manufacture, mark and sell of non-DOT containers identified as meter provers to ship hydrocarbon products.

Application No.	Applicant	Parties to exemption
2582-P	Air Products & Chemicals, Inc., Allentown, PA.	2582
2709-P	Aerojet Solid Propulsion Co., Sacramento, CA.	2709
4850-P	Austin Powder Co., Cleveland, OH.	4850
5248-P	Magnavox Government & Industrial Electronics Co., Fort Wayne, IN.	5248
6626-P	Strate Welding Supply Co., Inc., Buffalo, NY.	6626
7455-P	Austin Powder Co., Cleveland, OH.	7455
7607-P	Betz Murdock & Converse Inc. (BMC), Plymouth Meeting, PA.	7607
7803-P	Rocky Mountain Pro Clean Inc., Denver CO.	7803
7835-P	Sunox Inc., Charlotte, NC.....	7835
7835-P	American Welding Supply, San Jose, CA.	7835
8214-P	Chrysler Motors Corp., Center Line, MI.	8214
8451-P	Hercules Aerospace Co., Magna, UT.	8451
8451-P	Schlumberger Well Services, Rosharon, TX.	8451
8473-P	EVA Eisenbahn-Verkehrsmittel-Gasellschaft mbH, Dusseldorf, West Germany.	8473
8516-P	Austin Powder Co., Cleveland, OH.	8516
8518-P	Denver Truck Sales, Commerce City, CO.	8518
8554-P	Maurer & Scott Sales Inc., Douglassville, PA.	8554
8554-P	Blasting Supplies Co. Inc., Douglassville, PA.	8554
8554-P	PEPIN-IRECO Inc., Ishpeming, MI.	8554
8579-P	Austin Powder Co., Cleveland, OH.	8579
8723-P	PEPIN-IRECO Inc., Ishpeming, MI.	8723
8877-P	Image Technology, Tempe, AR.	8877
8877-P	Hi Pure Chemicals, Inc., Nazareth, PA.	8877
8877-P	Olin Hunt Specialty Products, Inc., West Patterns, NJ.	8877
9416-P	Platte Chemical Co., Greeley, CO.	9416
9533-P	Sacramento Air Logistics Center, McClellan Air Force Base, CA.	9533
9606-P	Autin Powder Co., Cleveland, OH.	9606
9750-P	.....do.....	9750
9769-P	Rollins Chempak, Inc., Wilmington, DE.	9769
9953-P	Stoops Express, Inc., Anderson, IN.	9953
9977-P	McDonnell Douglas Astronautics Co., Huntington Beach, CA.	9977

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 6, 1988.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 88-15943 Filed 7-14-88; 8:45 am]

BILLING CODE 4910-60-M

Applications for Exemptions; Hazardous Materials

AGENCY: Research and Special Programs Administration, DOT

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comment period closes August 15, 1988.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

New Exemptions

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9998-N	Accumulators, Inc., Houston, TX	49 CFR 173.302, 175.3	To authorize manufacture, marking and sale of non-DOT Specification packagings, identified as accumulators, for shipping Nitrogen, classed as Nonflammable gas. (Modes 1, 2, 3, and 4.)
9999-N	Arbel-Fauvet-Rail, Douai, Cedex, France	49 CFR 173.315, 173.315	To authorize manufacture, marking and sale of non-DOT Specification IMO Type 5 portable tanks for the shipment of certain materials classed as Flammable liquid, Flammable gas or Nonflammable gas. (Modes 1, 2, and 3.)
10000-N	Flight International, Newport News, VA	49 CFR 172.101, 172.204, 173.27, 175.3, 175.30, 175.320, Part 107, Subpart B, Appendix B.	To authorize transport of explosives that are forbidden for transport by air or are in quantities greater than authorized for transport by air. (Mode 4.)
10001-N	Union Carbide Corp., Danbury, CT	49 CFR 172.101, 173.316, 173.318, 173.320.	To authorize shipment of mixtures of Argon, refrigerated liquid and up to 10% Oxygen, refrigerated liquid, both classed as Nonflammable gas, in DOT Specification 4L cylinders, portable tanks and cargo tanks. (Modes 1 and 3.)
10002-N	Virginia Electric & Power Co., Richmond, VA.	49 CFR 172.504(c)	To authorize shipment of Nitrogren and Sulfur Hexafluoride, both classed as Nonflammable gas, without placards although the combined gross weight of the materials exceeds 1000 pounds. (Mode 1.)
10003-N	Hoover Group, Inc., Beatrice, NE	49 CFR 178.82	To authorize manufacture, marking and sale of non-DOT Specification steel, 55 gallon capacity containers, similar to DOT Specification 5B, for the shipment of Paint and Resin solution, both classed as Flammable liquid. (Mode 1.)
10004-N	Atlantic Research Corp., Camden, AR	49 CFR 173.239a	To authorize shipment of Ammonium percholorate, classified as Oxidizer, in non-DOT Specification tanks, similar in design to the Association of American Railroad 207W railcar tanks. (Mode 1.)
10005-N	Mobay Corp., Pittsburgh, PA	49 CFR 173.245	To authorize shipment of Dimethyldicarbonate, described as Corrosive liquid, poisonous, n.o.s., classed sa Corrosive material, in a non-DOT composite packaging consisting of 4 polystyrene enclosed glass bottles packaged inside a fiberboard box. rd box. (Mode 1.)
10006-N	Knappco, Kansas City, MO	49 CFR 178.341-4(b)	To authorize an alternative pressure vent for DOT Specification MC 306 cargo tanks, which are used to ship certain materials classed as Flammable liquid. (Mode 1.)
10007-N	Copps Industries, Inc., Menomeonee Falls, WI.	49 CFR 173.249	To authorize shipment of materials described as alkaline corrosive liquid, n.o.s., classed as Corrosive material, in a non-DOT composite packaging consisting of a tin can in a polyethylene insert within a DOT Specification 37A steel drum. (Modes 1, 2, 3, and 4.)
10009-N	Texaco Pipeline, Inc., Glendive, MT	49 CFR 173.119, 173.304, 173.315	To authorize shipment of hydrocarbon products, classed as Flammable liquid or Flammable gas, in a non-DOT Specification container described as a meter prover. (Mode 1.)
10010-N	Smith Systems, a Moorco operation, Corpus Christi, TX.	49 CFR 173.119, 173.304, 173.315	To authorize shipment of hydrocarbon products, classed as Flammable liquid or Flammable gas, in a non-DOT Specification container described as a meter prover. (Mode 1.)

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 6, 1988.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 88-15944 Filed 7-14-88; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: July 8, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0988.
Form Number: 8609.
Type of Review: Resubmission.
Title: Low-Income Housing Credit Allocation Certification.
Description: Form 8609 is used by state and local housing credit agencies to allocate a low-income housing credit dollar amount to owners of low-income housing. It is also used by owners to certify that the building qualifies for credit. Part I is completed by state or local agency; rest of form is completed by building owner. (Part II completed first year only; Part III completed each year for 15-year compliance period.)
Respondents: State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 1,000.
Estimated Burden Hours Per Response: 44 minutes.
Frequency of Response: Annually.
Estimated Average Reporting Burden: 36,509 hours.

OMB Number: 1545-1029.
Form Number: 8693.
Type of Review: Resubmission.
Title: Low-Income Housing Credit Disposition Bond.
Description: Form 8693 is needed per Internal Revenue Code section 42(j)(6) to post bond and waive the recapture requirement under section 42(j) in the case of disposition of a building on which the low-income housing credit was claimed. Internal Revenue regulations § 301.7101-1 requires that the posting of a bond must be done on the appropriate form as determined by the Internal Revenue Service.
Respondents: Individuals or households, Businesses or other for-profit, small businesses or organizations.
Estimated Number of Respondents: 5,000.
Estimated Burden Hours Per Response: 59 minutes.
Frequency of Response: On occasion.
Estimated Average Reporting Burden: 2,873 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88-15941 Filed 7-14-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 8, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0096.
Form Number: 1042 and 1042S.
Type of Review: Revision.
Title: Annual Withholding Tax Return For U.S. Source Income of Foreign Persons; Foreign Person's U.S. Source Income Subject to Withholding.
Description: Used by withholding agents to report tax withheld at source on payment of certain income paid to nonresident alien individuals, foreign partnerships, or foreign corporations. The Service uses this information to verify that the correct amount of tax has been withheld and paid to the U.S.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 15,000.
Estimated Burden Hours Per Response: 3 hours and 30 minutes.
Frequency of Response: Annually.
Estimated Average Reporting Burden: 478,284 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhuf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88-15942 Filed 7-14-88; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 136
Friday, July 15, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 53, Page 26367, July 12, 1988.

PREVIOUSLY ANNOUNCED DATE OF MEETING: Wednesday, July 13, 1988.

CHANGES: The following item was added to the agenda.

Open to the Public [1]

Lawn Darts—Notice of Proposed Rulemaking

The Commission will consider a draft Notice of Proposed Rulemaking (NPR) which would implement the Commission decision of May 25, 1988 to prohibit the sale of lawn darts that present a risk of skull puncture injuries.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

July 12, 1988.

[FR Doc. 88–16005 Filed 7–12–88; 5:11 pm]

BILLING CODE 6355-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., July 20, 1988.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573–0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Trans-Atlantic Enforcement Initiative.
2. Trans-Pacific Trades Malpractices.

CONTACT PERSON FOR MORE INORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 88–16007 Filed 7–12–88; 5:12 pm]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, July 20, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed Book-entry Securities service pricing change regarding reversal transactions.
2. Request by the State of California for an exemption from the cosigner provision of the Board's Credit Practices Rule.

Discussion Agenda

3. Proposals regarding the Board's 1988 budget.
4. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: July 13, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–16021 Filed 7–13–88; 10:41 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Wednesday, July 20, 1988, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: July 13, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–16022 Filed 7–13–88; 10:41 am]

BILLING CODE 6210-01-M

[1] The Commission decided by majority vote that agency business required adding this item without the usual advance notice.

federal register

Friday
July 15, 1988

Part II

National Aeronautics and Space Administration

48 CFR Part 1801 et al.
Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement; Final Rule

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1804, 1805, 1807, 1808, 1815, 1816, 1817, 1822, 1824, 1828, 1832, 1839, 1842, 1845, 1852, and 1870

[NASA FAR Supplement Directive 85-11]

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes implementing higher level issuances and other changes dealing with NASA internal or administrative matters.

EFFECTIVE DATE: July 20, 1988.

FOR FURTHER INFORMATION CONTACT: W.A. Greene, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453-8923.

SUPPLEMENTARY INFORMATION:

Background

The major changes involve: (1) Internal contract reporting, (2) procurement plan and master buy plan approval levels, (3) procurement of electricity, (4) award fees, (5) options, and (6) technical direction. Typographical and editorial changes to improve readability and conformance with FAR drafting conventions have been made. Substantive meanings have not been altered; however, entire textual segments have been reprinted when such changes are both numerous and scattered throughout the rule.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The regulations herein are in the exempted category. NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The regulation imposes no burdens on the public within the ambit of the Paper Work Reduction Work Act, as implemented at 5 CFR Part 1320.

List of Subjects in 48 CFR Parts 1801, 1804, 1805, 1807, 1808, 1815, 1816, 1817, 1822, 1824, 1828, 1832, 1839, 1842, 1845, 1852, and 1870

Government procurement.

S.J. Evans,

Assistant Administrator for Procurement.

1. The authority citation for 48 CFR Parts 1801, 1804, 1805, 1807, 1808, 1815, 1816, 1817, 1822, 1824, 1828, 1832, 1839, 1842, 1845, 1852, and 1870 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Part 1801 is amended as set forth below:

a. Subpart 1801.3 is revised to read as follows:

Subpart 1801.3—Agency Acquisition Regulations

1801.301 Policy.

The following shall be included in the NASA FAR Supplement:

(a) All agency-wide policies and procedures that govern the contracting process or that control contracting relationships, and

(b) All procurement policies, regulations, procedures, and forms requiring publication for public comment in accordance with Pub. L. 98-557. This statute requires publication for public comment at least 30 days before they may take effect of procurement policies, regulations, procedures, and forms (including amendments or modifications thereto) relating to the expenditure of appropriated funds that have either a significant effect beyond the internal operating procedures of the agency issuing the procurement policy, regulation, procedure, or form, or a significant cost or administrative impact on contractors or offerors.

(1) The statute does not delineate those policies and procedures that will have a significant effect beyond the internal operating procedures of the agency or have a significant cost or administrative impact. Examples of policies or procedures that fall in either of these categories are given in (b)(1) (i) through (iv) below. This list is not all inclusive and does not prohibit the agency from publicizing a policy or procedure that does not fall within one of the categories mandated by the statute.

(i) A contract clause requiring contractors to take precautions to avoid injury to Florida manatees, which have been designated as an endangered species, has a significant cost impact for contractors who must obtain protective devices for boat propellers and take other safety actions.

(ii) A contract clause requiring contractors to follow the Government's holiday schedule, thereby disallowing premium pay for work on contractor-designated holidays, will have an effect outside the internal operating procedures of the agency.

(iii) A contract clause requiring contractors to segregate costs by appropriations will affect the contractor's internal accounting system and have a significant impact.

(iv) Requiring contractor compliance with NASA's Space Transportation System Personnel Reliability Program will have an effect outside the internal operating procedures of the agency.

(2) In contrast, the following would not have to be publicized for public comment:

(i) Security procedures for identifying and badging contractor personnel to obtain general access at a NASA installation.

(ii) A one-time requirement in a construction contract for the contractor to develop a placement plan and for inspection prior to any concrete being placed. (This is part of the specification or statement of work.)

(iii) A policy that requires the NASA installation to maintain copies of unsuccessful offers.

1801.302-70 Field installation regulatory implementation.

(a) Heads of NASA field installations may prescribe policies and procedures that do not have a significant effect beyond the internal operating procedures of their installations. All other policies and procedures, described in 1801.301, must be forwarded to NASA Headquarters for approval in accordance with NASA's procedures for initiating changes to the NASA FAR Supplement.

(b) The Procurement Officer at each installation shall establish procedures, including screening and written rationale for each installation procurement policy, regulation, procedure, and form, to demonstrate compliance with 1801.302-70(a). The Procurement Officer shall provide a copy of each of these issuances, along with the associated rationale, to the Assistant Administrator for Procurement (Attn. Code HP).

1801.303 Publication and codification.

1801.303-70 Assignment of numbers.

(a) Part, subpart, section, and subsection numbers 1 through 69 are reserved for FAR use.

(b) Part, subpart, section, and subsection numbers 70 through 89 are reserved for NASA FAR Supplement use.

b. In Subpart 1801.4, 1801.401 is revised to read as follows:

1801.401 Definition.

"Deviation" means "deviation" as defined at FAR 1.401, except that, for NASA, the words "or NASA FAR Supplement" are added wherever "FAR" appears in the definition.

PART 1804—ADMINISTRATIVE MATTERS

1804.671-8 [Removed]

3. Section 1804.671-8 is removed.

PART 1805—PUBLICIZING CONTRACT ACTIONS

1805.303-71 [Amended]

4. In paragraph (b)(1) of 1805.303-71, the amounts "$5,000,000" and "$10,000,000" are revised to read "$10,000,000" and "$25,000,000," respectively.

PART 1807—ACQUISITION PLANNING

5. Subpart 1807.1, consisting of sections 1807.101 through 1807.170-3 and subpart 1807.71 consisting of sections 1807.7100 through 1807.7107 are revised to read as follows:

Subpart 1807.1—Acquisition Plans

1807.101 Definitions.

"Procurement plan" means a detailed outline of the method by which the contracting officer expects to accomplish the procurement. The plan is an administrative tool designed to enable the contracting officer to plan effectively for accomplishing an assigned procurement by analyzing the requirement and determining the method of procurement.

1807.102 Policy.

(a) In R&D procurements over $100,000, when three or fewer sources are known, the contracting officer shall have the requirements office query the Defense Technical Information Center (DTIC) IR&D Database to identify additional sources conducting IR&D in the area of the instant procurement. This is in addition to any other market survey techniques. Where needed, specific information concerning access to and use of the DTIC IR&D Database by a particular NASA Center may be obtained from that Center's designated IR&D Focal Point.

(b) As authorized in FAR 7.102, NASA uses its procurement planning system in lieu of the criteria in FAR Subpart 7.1. However, all procurement plans will comply with FAR 7.104(c), 7.105(b)(2), and when appropriate, 7.106. Regardless of the method employed, every acquisition shall be adequately planned to allow sufficient time to complete the competitive procurement process and award a contract by the required date.

1807.103 Agency-head responsibilities.

(a) *Requirement for preparation of procurement plans.* (1) Except as otherwise authorized by paragraph (a)(2) below, the contracting officer shall prepare a procurement plan, with the advice and assistance of the cognizant technical division, on each negotiated procurement estimated to exceed the dollar amount set forth below for the installation concerned. The plan shall be prepared before soliciting proposals.

(i) $250,000 for—

(A) Stennis Space Center.

(B) Headquarters Contracts and Grants Division.

(C) Space Station Procurement Office.

(D) NASA Resident Office—JPL.

(ii) $500,000 for—

(A) Ames Research Center.

(B) Goddard Space Flight Center.

(C) Johnson Space Center.

(D) Kennedy Space Center.

(E) Langley Research Center.

(F) Lewis Research Center.

(G) Marshall Space Flight Center.

(2) Procurement plans are not required to be prepared for procurements—

(i) Of architect-engineer services;

(ii) Based on unsolicited proposals;

(iii) Of basic research from nonprofit organizations;

(iv) Of utility services where the services are available from only one source;

(v) Made from or through other government agencies;

(vi) Of industrial facilities required in support of related procurement contracts; and

(vii) Of flight payloads and investigations where selection is made pursuant to Subpart 1870.1, NASA Acquisition of Investigations System.

(b) *Approval of procurement plans.* (1) Whenever the estimated cost of the procurement (including the aggregate amount of follow-on contracts) meets the thresholds below, procurement plans, shall, as a minimum, be reviewed and approved as follows:

(i) For procurements in excess of the dollar amount in 1807.103(a)(1) above, but less than the dollar amount below for the installation concerned, the procurement plan shall be submitted for the approval of the Procurement Officer or designee after review and written concurrence by the head of the cognizant technical division or laboratory, as applicable. (For the purpose of this requirement, the term "or designee" shall mean the individual authorized by the Procurement Officer to sign the procurement plan. Such authorization shall be in writing and shall not be delegated to more than one individual.)

(A) $5,000,000 for—

(1) Stennis Space Center.

(2) Headquarters Contracts and Grants Division.

(3) Space Station Procurement Office.

(4) NASA Resident Office—JPL.

(B) $10,000,000 for—

(1) Ames Research Center.

(2) Goddard Space Flight Center.

(3) Johnson Space Center.

(4) Kennedy Space Center.

(5) Langley Research Center.

(6) Lewis Research Center.

(7) Marshall Space Flight Center.

(ii) For procurements within the range of the dollar amounts below for the installation concerned, the procurement plan shall be submitted for the approval of the Head of the Installation, Deputy Installation Head, or Associate Director (the title "Associate Director" means a full Associate Director and not an Associate Director for * * *) after review and written concurrences by the Director or Assistant Director of the cognizant technical directorate, cognizant Program Manager, or cognizant staff official, as applicable, who reports directly to the Head of the Installation, and by the Procurement Officer.

(A) $5,000,000 but less than $10,000,000 for—

(1) Stennis Space Center.

(2) Headquarters Contracts and Grants Division.

(3) Space Station Procurement Office.

(4) NASA Resident Office—JPL.

(B) $10,000,001 but less than $25,000,000 for—

(1) Ames Research Center.

(2) Goddard Space Flight Center.

(3) Johnson Space Center.

(4) Kennedy Space Center.

(5) Langley Research Center.

(6) Lewis Research Center.

(7) Marshall Space Flight Center.

(iii) For procurements that are selected for Headquarters review and approval in accordance with the Master Buy Plan Procedure, the procurement plan shall be submitted for the signature of the Head of the Installation after review and written concurrences by the Director or Assistant Director of the cognizant technical directorate, cognizant Program/Project Manager, or cognizant staff official, as applicable, who reports directly to the Head of the Installation, and by the Procurement

Officer. The procurement plan shall be submitted to the Assistant Administrator for Procurement (Code HS) for approval. The original and ten copies shall be submitted. The position title will be shown for each individual signing the procurement plan as required by paragraphs (b)(1) (i) through (iii) above.

(2) Examples of what is meant by the phrase "including the aggregate amount of follow-on contracts" appearing in paragraph (b)(1) above are—

(i) Options as defined in FAR Subpart 17.2; and

(ii) Later phases of the same project.

(3) Approval of a procurement plan does not constitute approval of any deviation or special conditions or clauses which may be required. Any such deviations must be submitted for review and approval under FAR Subpart 1.4 and/or 1801.4.

1807.170 Contents of the procurement plan.

1807.170–1 Procurement plans requiring approval by NASA Headquarters.

(a) Each procurement plan prepared for approval by NASA Headquarters shall be prepared on NASA Forms 1451 and 1452. Form 1451, Request for Procurement Plan Approval, shall be completed as follows:

(1) *Item 1. A descriptive short title.* In this item, include only a descriptive short title of the procurement plan. A Detailed Description of the Proposed Procurement will be included in subsequent pages as required. The information to be provided will consist of—

(i) A clear and concise description, including intended use, of the item or service to be procured;

(ii) Number of units, delivery schedule, and/or period of performance (Note: In the event a schedule of major events will enhance the plan, it should also be included);

(iii) An identification of any option provision including the period(s) covered and estimated costs thereof; and

(iv) A statement as to whether the contractor will be required to comply with detailed specifications, meet performance requirements, perform a mission, or furnish a level of effort.

(2) *Item 2. Name of installation.* Indicate the name of the installation responsible for the procurement.

(3) *Item 3. Plan prepared by.* Indicate the name of the individual who prepared the plan.

(4) *Item 4. Date.* Date the plan is prepared.

(5) *Item 5. Responsible technical office.* Identify the office (by title) that will be responsible for technical monitoring of the contract. Include a technical point of contact and telephone number.

(6) *Item 6. Total estimated cost of this procurement.* Provide one figure for the total estimated cost of the proposed procurement, including options, if any. When options are involved, show the cost for each option separately on subsequent pages as a breakout from total cost.

(7) *Item 7. Proposed funding by fiscal year and Unique Project Number (UPN).* Identify the funding amounts by appropriation, fiscal year, and UPN, for the procurement covered by the plan. Where funding is obtained from multiple projects, provide a complete identification of each fund source. Obligations shall not exceed those authorized in the Headquarters-approved Annual Operating Plan.

(8) *Item 8. Full and open competition.* If full and open competition is provided for, check box. If other than full and open competition is contemplated, check box.

(9) *Item 9. Type of contract.* State the type of contract recommended for the procurement. On subsequent pages, discuss the type of contract and the rationale for its selection. Where an incentive-type contract is proposed, discuss the type of incentive provision considered most suitable for the accomplishment of the procurement objectives.

(10) *Item 10. Facilities and Government-furnished property.* Indicate, by checking the appropriate box, whether the procurement will require the providing of any existing, new, or modified Government property. When other Government property is to be provided, identify the item(s) and dollar amount(s) involved. The dollar amount(s) provided in Item 10 will not be included in the dollar amounts specified under Items 6 and 7 of the form unless the property or facilities specified are part of the procurement. If dollar amounts under Item 10 are included under Items 6 and 7, the amounts should be so annotated under this item on the following pages.

(11) *Item 11. Procurement action schedule.* Indicate the date the procurement plan was submitted to Headquarters for review and approval. For all other entries, provide only the number of calendar days required to complete the action (beginning at the time the previous action was completed) in order to meet the program schedule.

(b) *Additional pages*—(1) *General.* Additional pages to the plan should include any information required from the Form 1451 items. Include any comments required by the above instructions not covered elsewhere and any other information considered essential to amplify or clarify any item on the form. In addition—

(i) Identify specific deviation(s) to the Acquisition Regulation;

(ii) Identify any special conditions or clauses required;

(iii) Identify all separate approvals required in support of the proposed procurement;

(iv) Include a copy of any comments by Counsel for the contracting office (or a statement that Counsel has no objection to the plan) and describe the actions taken in response to any such comments (counsel concurrence on the plan will satisfy this item); and

(v) Discuss considerations given to small business, including minority business enterprises, participation.

(2) *Competition.* Describe how competition will be sought and promoted. If appropriate, discuss how competition will be sustained through the course of the acquisition. If full and open competition is not contemplated, cite the authority in FAR 6.202 or 6.302; identify the source(s); and discuss why full and open competition cannot be obtained.

(3) *Relationship to other procurements, relevant data, and studies.* Discuss the relationship of this procurement to any other active contracts, including the status of completion of each such contract. Identify the extent to which the product of related contracts may affect this procurement. Indicate whether performance under related, active contracts should be permitted to continue during the competitive phase of this action. Discuss all relevant data and studies, whether obtained under contract or through in-house efforts, and state whether such data and studies will be made available to all offerors participating in the competition. If data or studies are available, but it is not planned to make them available to prospective offerors, discuss the reasons for not doing so.

1807.170–2 Procurement plans requiring approval at the Installation level.

Procurement plans prepared for the approval at the Installation level shall be prepared in accordance with 1807.170–1 or in the format prescribed by the Installation.

1807.170–3 Assistance in providing for reliability assurance in procurement plans.

When system hardware costing over $1,000,000 is involved, reliability personnel at the field installation

involved shall assist in the preparation of the procurement plan with respect to arrangements to be made for reliability monitoring. In the absence of such reliability personnel, the field installation shall seek the advice and assistance of the Director, Reliability, Maintainability, and Quality Assurance, NASA Headquarters, Code QR, or designee, in the preparation of procurement plans.

Subpart 1807.71—Master Buy Plan Procedures

1807.7100 Scope of subpart.

This subpart prescribes the Master Buy Plan Procedure, contains the requirements for furnishing advance information to NASA Headquarters on proposed procurements that meet the criteria in this subpart, and prescribes the procedures for selecting those procurement documents that are to be subject to NASA Headquarters review and approval and those that are to be processed at the installation level. This subpart also prescribes the approval requirements for those documents that are to be processed at the installation level.

1807.7101 Policy.

The Master Buy Plan Procedure is designed to enable management to focus its attention on a representative selection of high dollar value and otherwise sensitive procurement actions without compromise of Headquarters visibility or control over essential management functions.

1807.7102 Applicability.

(a) The Master Buy Plan Procedure is applicable to each negotiated procurement when the expected dollar value of that procurement, including the aggregate amount of follow-on procurements (see 1807.103(b)(2), is expected to equal or exceed the dollar value in paragraph (b) below, for the installation making the award. In order to conduct the reviews required by FAR 8.307–1(b) for separate contracts, this procedure also applies to procurement of utility services when an area-wide contract is not used and either—

(1) The annual cost of the services to be procured is estimated by the using installation, at the time of the initiation of the service or annual renewal of the expenditure, to exceed $150,000 or

(2) When, except for communication services, a proposed connection charge, termination liability, or any other facilities charge to be paid (whether or not refundable) is estimated to exceed $75,000.

(b) The following are monetary limitations under the Master Buy Plan procedures.

(1) $10,000,000—

(i) John C. Stennis Space Center.

(ii) Headquarters Contracts and Grants Division.

(iii) Space Station Procurement Office.

(iv) NASA Resident Office—JPL.

For the purpose of the initial Master Buy Plan submission only, the above installations not having any procurements at or above the $10 million limitation will submit the three largest procurements over $5 million.

(2) $25,000,000—

(i) Ames Research Center.

(ii) Goddard Space Flight Center.

(iii) Johnson Space Center.

(iv) Kennedy Space Center.

(v) Langley Research Center.

(vi) Lewis Research Center.

(vii) Marshall Space Flight Center.

(c) The foregoing monetary limitations also apply to the following:

(1) A supplemental agreement (except one that provides only for the addition or deletion of funds for incremental funding purposes) that contains either new work, a debit change order, or a credit change order (or any combination/consolidation thereof) where any one of which (new work or an individual change order) or the aggregate of two or more actions equals or exceeds the dollar value in paragraph (b) above for the installation making the award.

(2) A supplemental agreement that contains one or more elements (new work and/or individual change orders) of a sensitive nature which, in the judgment of the installation or Headquarters, warrants Headquarters consideration under the Master Buy Plan Procedure, notwithstanding the fact that the monetary amount under consideration does not equal or exceed the installation's limitation in paragraph (b) above.

(d) The Master Buy Plan Procedure is not applicable to termination settlement agreements (see FAR Part 49).

1807.7103 Submission, selection, and notification procedures.

1807.7103–1 Submission of Master Buy Plan.

(a) Prior to July 15th of every year, each installation will submit to the Assistant Administrator for Procurement (Code HS) a Master Buy Plan (original and eight copies) for the next fiscal year, listing therein every known procurement that meets the criteria in 1807.7102, and that (1) is expected to be initiated in that fiscal year and (2) has not been included in a previous Master Buy Plan or amendment to a Master Buy Plan. The plan will include any type of phased procurement wherein the value of the initial phase (normally Phase B) is less than the dollar threshold in 1807.7102, but the overall procurement value for all phases exceeds the dollar threshold.

(b) The plans will be prepared in accordance with 1807.7107 and, for every procurement listed therein, an identification will be provided as to the individual procurement documents that are involved. Procurement documents that may require Headquarters approval will be held in abeyance until receipt of the notification required by 1807.7103–3 (a) or (b). This is not to preclude the planning for or initiation of such documents up to that point where Headquarters approval may be required. The fiscal year Master Buy Plan shall include a listing of those procurements that were selected for Headquarters review and approval from prior fiscal year(s) Master Buy Plans and amendments to Master Buy Plans that have not been completed. The procurements should be listed by the appropriate fiscal year Master Buy Plan; include the individual item numbers and current status of the individual procurement documents previously selected for Headquarters review and approval.

1807.7103–2 Submission of amendments to the Master Buy Plan.

Procurements identified by installations after submission of their Master Buy Plan for a fiscal year, which meet one of the criteria in 1807.7102, will be submitted to Headquarters in accordance with 1807.7107. Such amendments will be submitted sufficiently in advance of contract award date to allow Headquarters to select those procurement documents which will be subject to Headquarters review and approval without creating an unacceptable delay in contract placement. When timely submittal is not possible, the installation will provide with the amendment a narrative explaining the circumstances leading to the late submittal. Master Buy Plan submissions should not be accomplished after the fact. A Master Buy Plan submission for a contract change order which is expected to meet the criteria in 1807.7102 will be submitted to Headquarters immediately upon issuance of the change order.

1807.7103–3 Selection and notification procedures.

(a) Selection of procurement documents from the Master Buy Plan

and amendments to Master Buy Plans to receive Headquarters review and approval and designation of the Source Selection Officials shall be made by the Assistant Administrator for Procurement or designee.

(b) In the event a procurement, subsequent to document selection or delegation is changed (for example, increase or decrease in dollar amount, change in requirement), is cancelled, superseded, deferred, or no longer is subject to the Master Buy Plan procedures in accordance with the criteria in 1807.7102, the Assistant Administrator of Procurement (Code HS) will be immediately advised by the installation, together with the reasons therefor. The Assistant Administrator for Procurement or designee will notify the installation procurement office in writing of any further action which may be required.

1807.7104 Procurement documents selected for Headquarters review and approval.

(a) General. For those procurement documents selected for Headquarters review and approval under this procedure, the cognizant installation will ensure that they are submitted in accordance with this Subpart.

(b) Request for Proposal (RFP) review and approval. Should the RFP be selected for Headquarters review and approval, the installation procurement office shall submit ten (10) copies of the RFP to the Assistant Administrator for Procurement (Code HS). Also to be submitted with the RFP shall be the Source Selection Board evaluation methodology, including the rationale for the selection of the associated evaluation criteria, the expected significant discriminators that should result and the proposed method to be used in developing the Source Evaluation Board probable cost comparison. Any other significant cost or other factors that are expected to have a bearing on the evaluation should be discussed.

1807.7105 Acquisition Strategy Meeting (ASM).

(a) As a result of the Master Buy Plan review a decision to have an ASM at Headquarters may be made. The ASM is a meeting where all parties from Headquarters and the installation, who have an interest in the instant procurement, come together to discuss all aspects of the procurement and to resolve any major issues prior to proceeding with the processing of the formal documentation.

(b) The objective of an ASM is to provide sufficient business and programmatic planning as early as feasible in the acquisition of a product or service. An ASM is conducted as an early planning session to develop an agreed upon systematic approach to achieve an economical, efficient, and effective acquisition. Recommendations which result from the ASM are advisory in nature. The ASM will be scheduled by the Code HS procurement analyst responsible for the procurement. Attendance at the ASM will be coordinated between the Code HS analyst and the installation procurement office. However, it is expected that the following offices will participate:

(1) *Headquarters:* Cognizant program office, procurement, comptroller, SRM&QA and legal;

(2) *Installation:* Project office, procurement and other offices as determined by the installation.

(c) The meeting will normally be chaired by the Director, Program Operations Division (Code HS) or the designee of the Assistant Administrator for Procurement (Code H).

(d) A summary of any decisions, actions, and conclusions as a result of the meeting will be prepared by the Code HS analyst and be distributed to all participants for information and/or action.

1807.7106 Procurement documents not selected for Headquarters review and approval.

(a) Procurement documents which are not selected for Headquarters review and approval shall be processed at the installation level. For such procurements, the following documents, to the extent applicable, shall be approved by the Head of the Installation: procurement plans and prenegotiation positions. If the procurement is subject to the Source Evaluation Board Manual, the Head of the Installation shall sign the source evaluation board appointment letter and shall normally be the Source Selection Official.

(b) If the procurement is between $10,000,000 and $25,000,000 and the installation's Master Buy Plan limitation is $10,000,000, the Head of the Installation shall be the Source Selection Official but may redelegate this authority to cognizant management officials. The Head of the Installation may redelegate the authority to approve procurement plans and to sign source evaluation board appointment letters to the Installation's Deputy or Associate Director. The Head of the Installation may redelegate the authority to approve prenegotiation positions to the level of the Procurement Officer.

(c) Requests for proposals shall be approved as directed by the Procurement Officer, commensurate with the sensitivity or significance of the procurements. Contracts (including supplemental agreements) that are not selected for Headquarters review and approval under the Master Buy Plan Procedure, shall be subject to approval by the Procurement Officer. The signing of those documents by the Procurement Officer, as the contracting officer, constitutes such approval. The approvals required above may not be redelegated.

(d) Procurement documents authorized to be processed at the installation level will be subject to after-the-fact reviews by Headquarters personnel during normal procurement surveys or as the situation may otherwise indicate or through special reviews. However, procurement delegations to the field installations may subsequently be rescinded if a Headquarters review is deemed appropriate.

1807.7107 Format of Master Buy Plan.

In accordance with the requirements of 1807.7103–1 and 1807.7103–2, Master Buy Plans and amendments to Master Buy Plans will be prepared in accordance with the format illustrated in Table 7–1.

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

6. Part 1808 is amended as set forth below:

a. In Subpart 1808.3, 1808.303, 1808.304–5 and 1808.304–570 are revised to read as follows:

1808.303 General.

(a) For procurement of utility services without a written document, see 1808.304–5. Requirements for utility services shall be determined by technically qualified personnel who will assist the contracting officer as required. Before soliciting technical assistance outside the agency (see FAR 8.303(b)), technical personnel shall contact the Facilities Division (Code NX), NASA Headquarters.

(b) Appropriated funds may not be used to purchase electricity in a manner inconsistent with state law governing the provision of electric utility service, including state utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements (Pub. L. 100–202, Sec. 8093, 101 Stat. 1329–79). Before acquiring electric utility service, the contracting officer shall

determine whether the manner of acquisition, in particular, competitive acquisition under FAR 8.304–5(d), would be inconsistent with state law. Section 8093 of Pub. L. 100–202 is not intended to affect transfers of electricity to agencies from Federal power marketing agencies or the Tennessee Valley Authority, such as NASA's power allocation from the Western Area Power Marketing Administration. Such transfers do not constitute "purchases" for purposes of section 8093.

1808.304–5 Agency acquisition.

1808.304–570 Renewal of contracts.

(a) A contract may be renewed or extended by option, provided that the contract is not in effect for more than a total of 5 successive years.

(b) The Contracting Officers shall consider selecting an expiration date for the contract sufficiently after the end of the fiscal year to ensure that appropriations will be available when the option is exercised.

1808.705–4 and 1808.711 [Removed]

b. Sections 1808.705–4 and 1808.711 are removed.

PART 1815—CONTRACTING BY NEGOTIATION

1815.613–7 [Amended]

a. In 1815.613–71, in the heading, the word "Manual" is removed, and the word "Handbook" is added in its place.

b. In 1815.613–71, paragraphs (b)(1) and (b)(2) are revised to read as follows:

1815.613–71 Evaluation and negotiation of procurements conducted in accordance with the Source Evaluation Board Handbook (NHB 5103.6).

* * * * *

(b) *Evaluation and selection procedures*—(1) *Responsibility of source selection official.* In the final analysis, NASA judgment on the totality of the evaluation will be that of the Source Selection Official. This includes assessment of the procedures followed by the Board, the validity of its substantive evaluations, the relative significance of the several areas of evaluation and their weightings in the light of all the information produced by the source evaluation and selection process.

(2) *Evaluation factors, subfactors, and elements and weights.* The establishment of evaluation factors, subfactors, and elements and their weights requires the exercise of judgment on a case-by-case basis. They should be tailored to the requirements of each particular procurement. Technical excellence, price or estimated cost, and contractor management capability are important factors in selection. Their relative importance depends on the nature of the products or services procured. Any factor may tip the balance when competition is very close as to other factors. Evaluation factors, subfactors, and elements shall be described in each request for proposals (RFP) fully enough to inform evaluators and prospective offerors of the significant matters to be addressed in proposals. The evaluation factors (Mission Suitability, Relevant Experience and Past Performance, Cost, and Other Considerations) shall be described and a statement of the relative importance of each included in the RFP. In addition, the weights assigned to the Mission Suitability subfactors and elements shall be included in the RFP.

* * * * *

PART 1816—TYPES OF CONTRACTS

7. Subpart 1816.4 is amended by adding 1816.404 and 1816.404–2 to read as follows:

1816.404 Cost-reimbursement incentive contracts.

1816.404–2 Cost-plus-award-fee contracts.

To assure compliance with FAR 16.404–2(b)(2), all contract performance areas subject to evaluation on a judgmental basis, including performance areas such as cost and technical management, quality, timeliness, and productivity, shall be consolidated in a single award fee criteria and rating plan. The objective is a balanced evaluation of the contractor's overall performance, resulting in a single award fee determination consistent with NASA's management concerns and priorities in the particular situation.

PART 1817—SPECIAL CONTRACTING METHODS

8. Part 1817 is amended by revising Subpart 1817.2 to read as follows:

Subpart 1817.2—Options

1817.200 Scope of subpart.

The exceptions at FAR 17.200 do not apply to NASA contracts; therefore, the policy and procedures at FAR Subpart 17.2 apply to all contracts.

1817.203 Solicitations.

The "authorized person" mentioned in FAR 17.203(g)(2) is hereby designated as being the Procurement Officer.

1817.204 Contracts.

(a) As set forth in FAR 17.204, the total of basic and option periods shall not exceed five years. Deviations from this policy will not be granted unless (1) the extended years can be reasonably priced, and (2) a persuasive case (other than resources problems) can be made for exceeding five years.

Example: Some specific program event will occur at or near the end of the total contract period and a competition and potential change of contractor would be unacceptably disruptive or inefficient, or some other programmatic considerations dictate a longer period.

(b) In addition to establishing either a fixed or maximum fee or a formula for determining the fixed or maximum fee, options under cost type contracts shall contain an estimated cost for the option period(s).

1817.206 Evaluation.

For the purpose of FAR 17.206(b), the procurement officer at each center shall be the approval authority for determinations by the contracting officer not to evaluate offers for any option quantities or periods.

1817.207 Exercise of options.

(a) Unless a determination has been approved under FAR 17.206(b), the selection statement for each procurement involving an option shall include the source selection official's consideration of the option as part of the initial competition.

(b) Use of the provision (or formula) specified in FAR 17.207(f)(2) requires advance approval by the Assistant Administrator for Procurement (Code HC).

(c) For the purposes of FAR 17.207(f)(3)—

(1) In FAR 17.207(f)(3)(i), the term "fixed fee" applies only to cost-plus-fixed-fee (CPFF) contracts and the term "maximum fee" applies to cost-plus-award-fee (CPAF) and cost-plus-incentive-fee (CPIF) contracts.

(2) When using a formula pursuant to FAR 17.207(f)(3)(ii), the formula shall be expressed in the contract in a way that precludes the contractor from increasing costs for the purpose of earning additional fee. Use of a formula requires advance approval of the Assistant Administrator for Procurement. (Code HC).

1817.208 Solicitation provisions and contract clauses.

For the purpose of FAR 17.208(c)(3), cost reimbursement types of contracts are approved for agency use.

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

1822.608 [Removed]

9. Section 1822.608 is removed.

10. Part 1824 is revised to read as follows:

PART 1824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

1824.000 Scope of part.

For NASA rules and regulations implementing the Privacy Act, see NMI 1382.17 (14 CFR Part 1212). NASA implementation of the Freedom of Information Act is found in NMI 1382.2 (14 CFR Part 1206).

PART 1828—BONDS AND INSURANCE

11. Subpart 1828.1 is amended by adding 1828.106-6 to read as follows:

1828.106-6 Furnishing information.

(a) The contracting officer is designated to furnish a certified copy of the payment bond and the contract for which it was given upon receipt of an appropriate affidavit from the requestor.

(b) The contracting officer shall obtain the Office of Chief Counsel concurrence prior to release of any documents.

PART 1832—CONTRACT FINANCING

12. Part 1832 is amended as set forth below:

1832.172 [Removed]

a. Section 1832.172 is removed.

b. In Subpart 1832.4, 1832.402 is revised to read as follows:

1832.402 General.

Determinations and Findings in support of an advance payment with nonprofit organizations and educational institutions as authorized by the Armed Services Procurement Act of 1947, as amended (10 U.S.C. 2307(c) and 2310(b)), shall be prepared in accordance with 1832.410. Determination and Finding shall be by the level of authority designated below, or any of the higher levels designated below:

(a) *The Assistant Administrator for Procurement for*—

(1) Advanced payments greater than $25,000,000 for a single action or in the aggregate for a single contract are subject to the appropriate 60-day notification to Congress in accordance with 10 U.S.C. 2307(d);

(2) Advance payments in any amount to a foreign entity; or

(3) Advance payments in any amount when the organization will receive a fee for the effort involved.

(b) *The Procurement Officer*—for advance payments of $25,000,000 or less (other than with a foreign entity or an organization who will receive a fee); *Provided That* the action has been coordinated with the Installation Financial Management Officer.

(c) *The Contracting Officer*—for increases in the advance payment amount initially authorized by the Procurement Officer in (b) above, through any modification, supplemental agreement, or extension to an existing contract; provided that the Contracting Officer has coordinated the action with the Installation Financial Management Officer; and provided the increase is not greater than the Procurement Officer's initial amount and when aggregated with the Procurement Officer's initial amount and all previous increases is not greater than $25,000,000.

PART 1839—MANAGEMENT ACQUISITION AND USE OF INFORMATION RESOURCES

1839.000 [Removed]

13. Section 1839.000 is removed.

PART 1842—CONTRACT ADMINISTRATION

14. Part 1842 is amended as set forth below:

a. In Subpart 1842.2, paragraphs (b), (c), and (d) of 1842.270 are revised to read as follows:

1842.270 Contracting Officer Technical Representative (COTR) Delegations.

* * * * *

(b) COTRs shall be designated by name and position title (but see 1801.670(b) prohibition against delegating COTR duties to a position rather than a named individual). Each COTR designation shall be in writing and shall clearly define the scope and limitations of the COTR's authority. NASA Form 1634, Contracting Officer Technical Representative (COTR) Delegation, shall be used to designate COTRs. The COTR delegation shall be signed by an appropriate contracting officer (see 1801.670(b)) and shall state that these duties are not redelegable and that the COTR may be personally liable for unauthorized direction. (However, this does not prohibit the COTR from having assistants for the purpose of monitoring contractor progress and gathering information.) When one individual is to act for a contracting officer on more than one contract, separate delegations shall be issued for each contract. A separate NASA Form 1634 may be modified as necessary to designate an alternate COTR; alternates may act only during official absences of the COTR such as leave, TDY, or other special assignments. The delegated duties of the alternate shall not exceed those of the COTR.

(c) A COTR delegation shall remain in effect throughout the life of the contract unless cancelled in writing by an appropriate contracting officer. The contracting officer shall modify the scope and limitations of a COTR assignment only by cancelling the delegation and issuing a new delegation.

(d) A COTR shall not be authorized to initiate procurement actions by use of purchase orders, to place calls or delivery orders under indefinite quantity-type contracts, indefinite delivery-type contracts, or basic ordering agreements. A COTR shall not be authorized to award, agree to, or sign any contract or modification or in any way obligate the payment of money by the Government. The COTR is not authorized to issue technical direction unless the clause at 1852.242-70, Technical Direction, is included in the contract and such authorization is specifically listed in paragraph 3(m) of the COTR delegation letter (NASA Form 1634). However, delegations may be made to construction contract COTRs to sign emergency change orders, if sufficient funds have been certified to cover the emergency change, with an estimated value not to exceed $2,500 onsite at construction sites.

* * * * *

b. In Subpart 1842.70, paragraph (a) of 1842.7001 is revised to read as follows:

1842.7001 Contract clause.

(a) The contracting officer shall insert the clause at 1852.242-70, Technical Direction, in cost reimbursement solicitations and contracts where the contracting officer determines that (1) technical direction as defined in the clause (which includes the Government approving approaches and solutions of the contractor and shifting emphasis among work areas or tasks) is appropriate to accomplish the contract requirements effectively, (2) the statement of work is conducive to technical direction by the Government, and (3) technical direction is to be in writing. Identify this duty in subparagraph 3(m), "Other duties as follows:" of the Contracting Officer Technical Representative (COTR) Delegation (see 1842.270). This clause addresses COTR responsibilities that are in addition to those discussed in subparagraphs 3(a)-(1) of the COTR delegation and is not intended to be used for fulfilling those other responsibilities. This clause is not authorized for use with institutions of

higher education and other non-profit organizations.

* * * * *

PART 1845—GOVERNMENT PROPERTY

15. In Subpart 1845.71, in 1845.7101, paragraph (g) of the Property Classification Accounts is revised to read as follows:

1845.7101 Instructions for the preparation of NASA Form 1018.

* * * * *

1. Property Classification Accounts

* * * * *

(g) *Special Test Equipment.* The classification "special test equipment" includes costs of either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract; items or assemblies of equipment, including standard or general purpose items or components, that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include costs of material, special tooling, facilities (except foundations and similar improvements necessary for installing special test equipment), and plant equipment items used for general plant testing purposes.

* * * * *

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

16. Part 1852 is amended as set forth below:

a. In Subpart 1852.1, 1852.103 is revised to read as follows:

1852.103 Identification of provisions and clauses.

(a) Provisions and clauses prescribed by a NASA field installation to satisfy the needs of that particular installation shall be identified as stated in paragraphs (a) (1) and (2) below. Articles, formats, and similar language shall be treated as provisions and clauses for purposes of this section.

(1) A provision or clause shall be numbered using a prefix, a base, and a suffix. The prefix shall be an alphabetical abbreviation of the installation name (e.g., ARC, GSFC, HW, JSC, KSC, LARC, LERC, MSFC, and SSC). The base shall be a numeric value beginning with "52.2," with the next two digits corresponding to the number of the FAR subject part to which the provision or clause relates. The suffix shall be a hyphen and sequential number assigned within each part. NASA installations shall use suffix numbers from –90 to –199. For example, the first Johnson Space Center (JSC) clause relating to Part 36 of the FAR or NASA FAR Supplement shall be JSC 52.236–90, the second clause JSC 52.236–91, and so forth. Provisions and clauses shall be dated in accordance with FAR 52.101(f).

(2) Contracting officers shall identify provisions and clauses as in the following examples:

(i) I.2 BID ENVELOPES (GSFC 52.214–90) (AUG 1987). This example is applicable when identifying the title of provisions and clauses in solicitations and contracts using the Uniform Contract Format (UCF). The first number ("I.2") designates the UCF section and the sequential clause within that section. "GSFC 52.214–90" specifies the clause number.

(ii) GSFC 52.214–90—Bid Envelopes (AUG 1987). This example is applicable in all other instances in which the provision or clause citation is not associated with the UCF number.

(b) Contracting officers shall not number provisions and clauses developed for individual procurements only. For example, "F.3 Delivery Procedures for Special Hardware" cites the third clause in Section F of a contract using the Uniform Contract Format (UCF) but has no clause number or date identified with it, indicating that the clause was developed for the particular contract it appears in.

b. Section 1852.210–70 is revised to read as follows:

1852.210–70 Brand name or equal.

As prescribed in 1810.011, insert the following provision:

BRAND NAME OR EQUAL

(July 1988)

(a) As used in this provision, the term "brand name" includes identification of products by make and model. The term "bid" means "offer" if this is a negotiated acquisition.

(b) If items called for by this solicitation have been identified in the Schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products including products of the brand name manufacturer other than the one described by brand name will be considered for award if such products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements referenced in solicitation.

(c) Unless the offeror clearly indicates in the bid that it is offering an "equal" product, the bid shall be considered as offering a brand-name product referenced in the solicitation.

(d)(1) If the offeror proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the solicitation or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the offeror or identified in its bid, as well as other information reasonably available to the contracting activity. CAUTION TO OFFERORS. The contracting office is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the contracting office. Accordingly, to insure that sufficient information is available, the offeror must furnish as a part of its bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting office to (i) determine whether the product offered meets the salient characteristics requirements of the solicitation and (ii) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the contracting office.

(2) If the offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, it shall—

(i) Include in the bid a clear description of such proposed modifications and

(ii) Clearly mark any descriptive material to show the proposed modifications.

(3) If this is a sealed bid acquisition, modifications proposed after bid opening to make a product conform to a brand name product referenced in the solicitation will not be considered.

(End of provision)

1852.217–71 and 1852.217–72 [Removed]

c. Sections 1852.217–71 and 1852.217–72 are removed.

1852.235–72 [Amended]

d. In 1852.235–72, in the introductory text, the word "clause" is removed, and the word "provision" is added in its place.

e. Section 1852.242–70 is revised to read as follows:

1852.242–70 Technical direction.

As prescribed in 1842.7001, insert the following clause:

TECHNICAL DIRECTION

(July 1988)

(a) Performance of the work under this contract shall be subject to the written technical direction of the Contracting Officer's Technical Representative (COTR), who shall be specifically appointed by the contracting officer in writing in accordance with NFS 1842.270. "Technical direction" means a directive to the Contractor that approves approaches, solutions, designs, or refinements; fills in details or otherwise completes the general description of work or documentation items; shifts emphasis among

work areas or tasks; or furnishes similar instruction to the Contractor. Technical direction includes requiring studies and pursuit of certain lines of inquiry regarding matters within the general tasks and requirements in Section C of this contract.

(b) The COTR does not have the authority to, and shall not, issue any instructions purporting to be technical direction which—

(1) Constitutes an assignment of additional work outside the Statement of Work;

(2) Constitutes a change as defined in the contract clause entitled "Changes";

(3) In any manner causes an increase or decrease in the total estimated contract cost, the fixed fee (if any), or the time required for contract performance;

(4) Changes any of the expressed terms, conditions, or specifications of the contract; or

(5) Interferes with the contractor's rights to perform the terms and conditions of the contract.

(c) All technical direction shall be issued in writing by the COTR.

(d) The Contractor shall proceed promptly with the performance of technical directions duly issued by the COTR in the manner prescribed by this clause and within his/her authority under the provisions of this clause. If, in the opinion of the Contractor, any instructions or direction by the COTR falls within one, or more, of the categories defined in (b) (1) through (5) above, the Contractor shall not proceed but shall notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and shall request the Contracting Officer to take action as described herein. Upon receiving the notification from the Contractor, the Contracting Officer shall either issue an appropriate contract modification within a reasonable time or advise the contractor in writing within thirty (30) days after receipt of the Contractor's letter that the technical direction is—

(1) Rescinded in its entirety; or

(2) Within the scope of the contract and does not constitute a change under the "Changes" clause of the contract and that the Contractor should proceed promptly with the performance of the technical direction.

(e) A failure of the Contractor and Contracting Officer to agree that the technical direction is both within the scope of the contract and does not constitute a change under the "Changes" clause of the contract, or a failure to agree upon the contract action to be taken with respect thereto shall be subject to the provisions of the "Disputes" clause of this contract.

(f) Any action(s) taken by the Contractor in response to any technical direction given by any person other than the Contracting Officer or the COTR shall be at the Contractor's risk.

(End of clause)

ALTERNATE I

(July 1988)

As prescribed in 1842.7001(b), substitute Alternate I as paragraph (d) of the basic clause.

(d) The Contractor shall proceed promptly with the performance of technical direction duly issued by the COTR in the manner prescribed by this clause and within his/her authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COTR falls within one or more of the categories defined in subparagraphs (b) (1) through (5) above, the Contractor shall not implement the direction but shall notify the Contracting Officer in accordance with the Notification of Changes clause (FAR 52.243-7) of this contract.

(End of clause)

PART 1870—NASA SUPPLEMENTARY REGULATIONS

17. Appendix I to 1870.103 is amended as set forth below:

a. In Chapter 5, Part 501.1.c., paragraph (4) is added to read as follows:

1870.103 NASA Acquisition of investigations.

* * * * *

Chapter 5—The Selection Process

* * * * *

501 Decisions To Be Made

* * * * *

c. * * *

* * * * *

(4) If a NASA employee submits a proposal as a principal investigator, any concomitant requirement for hardware necessary to perform the investigation must, in accordance with CICA, either be competed by the installation procurement office or, should it be determined that the hardware is so unique as to constitute a sole source, a justification must be written, synopsized, and approved in accordance with the requirements of FAR and the NFS.

Appendix D to Appendix I of 1870.103 [Amended]

b. In Appendix D, under the term "Co-Investigator (Co-I)," the following sentence is added at the end of the definition:

"A NASA employee can participate as a Co-I on an investigation proposed by a private organization."

c. In Appendix D, under the term "Principal Investigator (PI)," the following sentence is added at the end of the definition:

"A NASA employee can participate as a PI only on a government-proposed investigation."

[FR Doc. 88-15038 Filed 7-14-88; 8:45 am]
BILLING CODE 7510-01-M

Federal Register

Friday
July 15, 1988

Part III

Department of the Interior

Minerals Management Service
Bureau of Land Management

30 CFR Parts 202 et al.
43 CFR Part 3480
Revision of Coal Product Valuation Regulations and Related Products; Further Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Bureau of Land Management

30 CFR Parts 202, 203, 206, and 212

43 CFR Part 3480

Revision of Coal Product Valuation Regulations and Related Topics

AGENCY: Minerals Management Service (MMS), Bureau of Land Managment, Interior.

ACTION: Further notice of proposed rulemaking.

SUMMARY: This proposed rulemaking provides for the amendment and clarification of regulations governing the valuation of coal for royalty purposes. The regulations being amended affect Federal coal leases and Indian (Tribal and allotted) coal leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma).

The purpose of this proposed rulemaking is to update, consolidate, and clarify existing regulations in order to provide industry and the public with a comprehensive and consistent coal valuation policy. The revised regulations will result in consistent and uniform guidance to industry relative to the valuation of coal for royalty computation purposes.

DATE: Written comments must be received on or before September 13, 1988. A hearing will be held on September 7, 1988, 8:30 a.m. to 4:00 p.m. in Lakewood, Colorado.

ADDRESS: Written comments may be mailed to Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 662, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

The hearing will be held in the auditorium, Building 25, Denver Federal Center, 6th and Kipling Streets, Lakewood, Colorado.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb (303) 231–3432, (FTS) 326–3432.

SUPPLEMENTARY INFORMATION: The principal authors of this rule are Earl Cox, Herbert B. Wincentsen, Thomas J. Blair, and Stanley J. Brown of the Royalty Valuation and Standards Division of the Minerals Management Service (MMS), Lakewood, Colorado; Donald T. Sant, Deputy Associate Director for Valuation and Audit, MMS; and Peter J. Schaumberg of the Office of the Solicitor, Washington DC.

I. Introduction

A notice of proposed rulemaking for coal product valuation regulations was published in the **Federal Register** on January 15, 1987 (52 FR 1840), with a 90-day comment period. The public comment period was reopened on July 9, 1987. Additional comments were accepted through July 23, 1987 (52 FR 25887). A total of 82 comments were received from industry representatives, State governments, local governments, Indian Tribes, Indian organizations, and other persons.

During the initial comment period, a public hearing on the proposed rulemaking was held on March 3, 1987, in Denver, Colorado. The Royalty Management Advisory Committee (RMAC) also held a meeting on April 1, 1987, in Denver, Colorado, on the proposed coal valuation rulemaking. Industry, State, and Indian representatives also met with MMS and Department of the Interior (Department) officials during the comment period to discuss issues pertaining to the proposed rulemaking. Minutes from these meetings were included in the record and were incorporated as comments on the proposed rulemaking along with the transcripts from the public hearing and RMAC meeting, and written comments received by MMS.

On August 12, 1987, MMS published a notice in the **Federal Register** (52 FR 29868) reopening the public comment period for 60 days primarily to obtain public comments on a proposal submitted jointly on behalf of the coal and electric utility industries. This proposal included a comprehensive, section-by-section set of revisions to the January 1987 proposed rulemaking. The MMS received 48 comments on the industry proposal which are discussed in more detail below.

The MMS also recently completed two rulemakings to adopt new product valuation regulations for oil (53 FR 1184, January 15, 1988) and gas (53 FR 1230, January 15, 1988). The rulemaking process for oil and gas included draft rules, proposed rules, and two further notices of proposed rulemaking with draft final rules appended. (Citations are included in the preamble to the final rules.)

On June 7, 8, and 9, 1988, MMS held open meetings with representatives of the Western States, Indian Tribes, and the coal and electric utility industries to discuss a draft of this proposed rule. Several suggested changes and additions offered at those meetings have been incorporated in this proposed rule.

In this preamble, MMS will note some of the principal comments received thus far on the coal rules. Most comments will be addressed in the final rule. The MMS will include in the rulemaking record all comments received to date plus the comments on this further notice of proposed rulemaking.

To the extent that the regulatory provisions in this notice have not changed significantly from the January 1987 proposal, we are not repeating the preamble discussion in this notice. Commenters should refer to the January 15, 1987, notice of proposed rulemaking (52 FR 1840).

Sections 206.254, 206.257, 206.259, 206.262, and 206.263 of the proposed rule contain information collection requirements. Public reporting burden for this collection of information is estimated to vary from one half hour to 3 hours per response with an average of 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Due to the complexity of the information requested, applications for allowances, using Forms MMS–4292 and MMS–4293 in non-arm's-length or no-contract situations may require up to an estimated 40 hours per response. Send comments regarding the burden estimate or any other aspect of this collection of information including suggestions for reducing this burden, to the Information Collection Clearance Officer, Mail Stop 631, Minerals Management Service, 12203 Sunrise Valley Drive, Reston, VA 22091; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

II. Purpose and Background

These rules would supersede all currently effective coal royalty valuation directives, such as those contained in numerous Secretarial, MMS, and U.S. Geological Survey Conservation Division (now Bureau of Land Management Onshore Operations) decisions and orders. These rules would apply to production on or after the effective date of the final rule for all leases including coal from existing leases, except for certain proposed grandfather provisions which are addressed later in this preamble.

Structurally, these rules add sections to 30 CFR Parts 202, 203, and 206, revise subpart titles in Part 212, and remove paragraphs from 30 CFR 203.250 and 43 CFR 3485.2. Paragraph (b) of § 203.250 is redesignated to Part 202 as § 202.250. Also, §§ 206.250, 206.251, 206.252, 206.253, 206.254, 206.255, 206.256, 206.257,

206.258, 206.259, 206.260, 206.261, 206.262, 206.263, 206.264, and 206.265 are added to Subpart F of Part 206.

For the convenience of coal lessees, payors, and the public, the following chart summarizes the effects of the proposed rule:

Regulation Changes (all from 30 CFR, except as noted)	Descriptions
I. Redesignations:	
1. Paragraph (b) of § 203.250 is designated to Part 202 as § 202.250	This administrative action more appropriately locates within 30 CFR the information contained in this paragraph.
2. Paragraph (a) of § 203.250 is redesignated as § 203.250	This administrative action removes the paragraph designation.
3. Paragraph 3485.2(j) is redesignated to 3485.2(d)	This action resulted from the deletion of paragraphs 3485.2(d) through 3485.2(i).
II. Deletions	
1. Paragraphs (c), (d), (e), (f), (g), (h), (i), (j), and (k) of § 203.250 are removed.	This action eliminates the existing coal product valuation regulations.
2. Paragraphs (d), (e), (f), (g), (h), (i), and (k) of § 3485.2 are removed	This action eliminates the existing coal product valuation regulations found at Subpart 3485 of 43 CFR. These regulations are redundant with those at § 203.200, of 30 CFR Part 203, and would conflict with the new regulations intended to replace those in § 203.200.
III. Additions:	
1. Sections 206.250, 206.251, 206.252, 206.253, 206.254, 206.255, 206.256, 206.257, 206.258, 206.259, 206.260, 206.261, 206.262, 206.263, 206.264, and 206.265 are to be added to Subpart F of Part 206.	The addition of these sections provides new coal valuation regulations to replace those currently found at § 203.200 of 30 CFR and § 3485.2 of 43 CFR.
2. Subpart H—Geothermal Resources—[Reserved] and Subpart I—"OCS Sulfur (Reserved)" are added to Part 212.	This administrative action creates new subparts for future rulemaking requirements.
IV. Amendments:	
1. Section 206.10 is amended to add information collection requirements for coal product valuation.	This administrative action places all information collection in Subpart A—General Provisions.
2. The titles of Subparts C, D, F, and G under Part 212 are revised to read:	This administrative action creates new subparts for future rulemaking requirements.
Subpart C—Federal and Indian Oil—[Reserved]	
Subpart D—Federal and Indian Gas—[Reserved]	
Subpart F—Coal—[Reserved]	
Subpart G—Other Solid Minerals—[Reserved]	
3. Section 212.200 under Part 212 is amended	This technical amendment deletes the obsolete reference to the "District Mining Supervisor" and replaces the word "Associate Director for Royalty Management" with the word "MMS" for consistency with other parts.

These rules generally would apply the same valuation standards to coal from Indian lands and coal from Federal lands. Except for Indian cents-per-ton leases (which currently have specific royalty provisions in Title 25 of the Code of Federal Regulations, *see* 25 CFR 211.15(c), 212.18(c), 213.23(c), and 214.10(b)), this is a continuation of the practices under existing regulations.

These rules expressly recognize, however, that where the provisions of any Indian lease, or any statute or treaty affecting Indian leases, are inconsistent with the regulations, then the lease, statute, or treaty shall govern to the extent of the inconsistency. This same principle applies to Federal leases.

The mineral leasing laws require that the Secretary receive a royalty on the "value of production" or the "value of coal" from minerals produced from Federal lands, but value is a word without precise definition. "Men have all but driven themselves mad in an effort to definitize its meaning." *Andrews* v. *Commissioner of Internal Revenue*, 135 F.2d 314, 317 (2nd Cir. 1943). The word "value" has sometimes been modified by the words "fair market," although the mineral leasing law provisions on "value of production" do not include these words. But, these adjectives do not really clarify the word value. The word "fair" can modify the word value as in "fair value" or it can modify the word market as in "fair market." The term "fair value" may not be interpreted the same as the "fair market" value. The term fair market value, however, has been generally accepted to be the price received by a willing and knowledgeable seller, not obligated to sell, from a willing and knowledgeable buyer not obligated to buy. Willing, knowledgeable, and obligated are again adjectives which are not terms of precise definition. These general concepts, however, were still the general principles which were followed in drafting these regulations on valuation of production for the purpose of calculating royalties. The general presumption is that persons buying or selling products from Federal and Indian leases are willing, knowledgeable, and not obligated to buy or sell. Because the U.S. economy is built upon a system whereby individuals are provided the opportunity to advance their individual self interest, this seems to be a reasonable presumption. This system and its reliance on self-motivated individuals to engage in transactions that are to their own best interest, therefore, is a cornerstone of the regulations.

The purpose of the regulations is to define the value of production, for royalty purposes, for production from Federal and Indian lands. Value can be determined in different ways, and these rules explain how value is to be established in different circumstances. Value in these regulations generally is determined by prices set by individuals of opposing economic interests transacting business between themselves. Prices received for the sale of products from Federal and Indian leases pursuant to arm's-length contracts are often accepted as value for royalty purposes. However, even for some arm's-length contracts, contract prices may not be used for value purposes if the lease terms provide for other measures of value (such as Indian leases) or when there is a reason to suspect the bona fide nature of a particular transaction. Even the alternative valuation methods, however, are determined by reference to prices received by individuals buying or selling like-quality products in the same general area and having opposing economic interests. Also, in no instance can value be less than the amount received by a lessee in a particular transaction.

III. Response to General Comments on the First Notice of Proposed Rulemaking

Comment: One issue that permeated many of the comments, but which is unrelated to coal valuation, concerns the royalty rate. Several comments submitted by industry and several States stated that the 12½-percent

royalty rate was too high thus placing an unfair financial burden on lessees, which in turn places them at an economic disadvantage. One State commented that royalty rates, in concert with valuation of deep-mined coal, place underground mines at a disadvantage and the 8-percent royalty rate "should be lowered accordingly to a maximum rate of 5 percent, but more equitably, a lower rate should be adopted by legislative action."

MMS Response: The royalty rate is not a valuation issue. The 12½-percent royalty rate imposed on surface coal operations is required by statute. The Mineral Leasing Act of 1920 (MLA), as amended specifically by the Federal Coal Leasing Amendments Act of 1976 (FCLAA), requires the Secretary of the Interior to determine a royalty "of not less than 12½-per centum * * * except the Secretary may determine a lesser amount in the case of coal recovered by underground mining operations." The Bureau of Land Management (BLM) regulations at 43 CFR 3473.3–2 require a royalty rate of 8 percent for coal from underground mines, with the provision to determine a lesser rate if conditions warrant, but in no case less than 5 percent. The MLA at 30 U.S.C. 209 provides statutory authority to reduce royalty rates for those lessees that cannot successfully operate their leases under the prevailing terms and conditions.

Comment: Several commenters expressed concern that deletion of redundant royalty provisions from 43 CFR 3485.2 would create confusion because of cross-references found in other sections of 43 CFR Part 3480. The MMS agrees that some potential confusion could result if certain sections of 43 CFR 3480 continue to refer to portions of 43 CFR 3485.2 which would be deleted under a final rulemaking. The BLM will, as part of its normal ongoing housekeeping duties, ensure that 43 CFR 3480 is appropriately modified to eliminate cross-references to nonexistent sections.

Comment: Some commenters stated that in the January 1987 proposed rulemaking, MMS neither acknowledged nor adopted the Royalty Management Advisory Committee's (RMAC's) recommendations concerning coal product valuation. These commenters also stated that MMS did not provide its reasoning for not accepting RMAC's recommendations.

MMS Response: These comments are without merit. The January 15, 1987, **Federal Register** notice states that "MMS also has considered the written and oral comments from the public on the draft rules and the resolution presented to the Secretary by RMAC." (52 FR 1840) The MMS also noted with appreciation the dedicated efforts of all participants who worked on the problems of coal valuation. The MMS considered the section-by-section analysis that preceded the proposed rules adequate explanation and notice to the public, including RMAC, of the substantive reasoning and motivation that guided the formulation of the proposed rules.

Comment: Several industry commenters claimed that MMS's proposed regulations were destroying the longstanding past practice of royalty valuation which is supported by administrative and judicial decisions. Some commenters stated that MMS's regulations represented an attempt to broaden, not clarify, regulations pertaining to royalty valuation. One commenter stated that, "The Minerals Management Service has demonstrated an attitude which borders on the rapacious. The proposed rules are nothing more than a naked attempt to maximize revenues from federal and Indian coal leaseholds." One commenter stated that MMS's use of longstanding policy to support these regulations was untenable, because there is no longstanding policy for coal product valuation.

MMS Response: The MMS disagrees with the commenter's categorization of MMS's attitude as bordering on the "rapacious." On the contrary, MMS believes the proposed rules appropriately update and clarify existing policies regarding coal royalty valuation. The MMS and its predecessor agency, the Conservation Division, U.S. Geological Survey, have always required royalty to be paid on the full value of the coal. This policy was established in the early 1970's in order to uniformly administer the first Federal coal leases that carried ad valorem royalty rates. Many of the original underlying principles of coal royalty valuation were cloned from existing valuation practices for noncoal leasable minerals, notably phosphate, potassium, and sodium, which, since the enactment of the MLA, have always required ad valorem royalty rates. The MMS considers royalty valuation principles dating back to the 1920's and 1930's as longstanding.

Comment: State and Indian commenters stated that the manner in which the proposed regulations were constructed essentially eliminates the protection of the existing regulations, and the self-implementing aspects of the proposed regulations invite industry abuse. These commenters further charged that MMS was abrogating its monitoring, review, and audit responsibilities with respect to coal product valuation. On the other hand, one industry commenter stated an objection to the "subjective determination elements [which] indicate a significant distrust by the government of the coal industry's past practices of valuation and accounting for royalty purposes."

MMS Response: The MMS believes that no derogatory connotation of industry accounting or valuation practices should be attributed to the first proposed rules. These rules should also not be viewed as delegating valuation responsibilities and duties to industry. The report entitled "Fiscal Accountability of the Nation's Energy Resources" written by the Linowes Commission and published in January 1982 (p. xvi) stated "*The Federal government should perform an oversight role.* It must not waste its limited resources on tasks that are industry's responsibility. In managing royalty collection, it should not remain mired in bookkeeping details that rightly belong to the lessee. Instead, it should develop systematic, independent cross checks of royalties paid and reports submitted by companies, and it should impose meaningful penalties for false statements or gross errors." The MMS considers these rules to carry out that recommendation.

Comment: Many industry commenters stated that the proposed regulations do not promote development of Federal coal resources. An area of concern to these commenters is that these regulations discourage conservation of Federal coal. Some industry commenters stated that the proposed regulations would influence the economic behavior of the coal industry. One commenter's rationale for this position was that "The economic forces of the marketplace would move mine plans away from high-royalty/high-cost coal to lower-royalty/lower-cost coal or would hasten the closure or cessation of the mining of such Federal coal reserves." One commenter also stated "that MMS or BLM, is party to the ups and downs of the coal business and as such should work with the industry to improve market share as well as profitability." One commenter stated that MMS failed to take into consideration the Mining and Minerals Policy Act of 1970, which states that in part that: "The Congress declares that it is the continuing policy of the Federal Government * * * to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining * * *." One State commenter and one Indian

commenter suggested that MMS should ignore any potential economic impacts that may result from the final coal valuation regulations. Opposing this viewpoint, one industry commenter stated that MMS should consider the plight of the electric utility rate payer who ultimately bears the full burden of any royalty increase.

MMS Response: The MMS disagrees with the statement that these regulations do not promote development of coal resources. The MMS considers these regulations to promote development to the extent that they would better communicate MMS's coal valuation policy to lessees. In this respect, the informed judgment of lessees, who are also prudent businessmen, is enhanced, thus providing increased certainty regarding the economic consequences of Federal or Indian coal lease production. The MMS has no mandate to promulgate coal valuation rules that are expressly designed to preserve or improve the Federal or Indian lessor's overall nationwide market share of coal production.

Comment: Some industry commenters stated that all existing coal sales contracts or supply agreements should be "grandfathered" under any new royalty scheme. Under this approach, any such coal sales contracts would be subject to the royalty requirements in effect at the time the coal supply contract was executed. One of these comments cited the Interior Board of Land Appeals (IBLA) support for this position by quoting *Kanawha & Hocking Coal & Coke Co.*, 93 IBLA 179, at 183 as follows: "The method of calculating the value of coal for royalty purposes shall be that method set forth in the regulation on the effective date of readjustment, and any subsequent regulatory change will not alter that method." Similarly, two industry commenters requested that only leases readjusted after these rules become effective should be subject to these regulatory requirements. Other respondents raised this issue again in comments submitted specific to § 206.250(b).

MMS Response: It is MMS's intent that absent specific lease terms that set forth specific valuation criteria, the proposed rules, when final, would govern the valuation of coal from Federal and Indian leases. However, there are some lessees with contracts that pre-date the Federal Coal Leasing Amendments Act (FCLAA) of 1976 and that do not have reimbursement provisions common to contracts after FCLAA's enactment. The MMS would like comments on whether there is a way to grandfather these contracts that would be consistent with the requirements of FCLAA and the Mineral Leasing Act.

With regard to the comments that MMS should not make the new regulations applicable to existing pre-FCLAA contracts because the new rules would require royalty to be paid on payments which the commenters said are not royalty bearing under existing rules, MMS would like further comments, specifically identifying the type of payments that are involved.

Comment: Two industry commenters stated that the proposed royalty valuation instructions are unclear when there is mixed mineral ownership at a single mine. One commenter requested that MMS provide guidance for the calculation of royalties "when an operator is producing coal from both Federal and non-Federal [lands] * * *." This commenter also stated that this issue becomes even more critical with respect to payments for insurance compensation, coal recovered from waste piles or slurry ponds, take-or-pay payments, and purchaser reimbursements for certain costs items. Another industry commenter claimed that it is "entirely possible that the definition of gross proceeds will be significantly different on the Federal and non-Federal leases."

MMS Response: The MMS agrees that royaly terms in leases between private land owners and coal operators, or between States and coal operators, may differ significantly from Federal lease royalty terms. However, the applicability of these proposed rules is limited to Federal and Indian Tribal and allotted coal leases. See § 206.250. Similarly, valuation procedures or instruction contained in private or State leases do not pertain to Federal or Indian leases.

Comment: Two State commenters argued that MMS's attempt to provide certainly to coal valuation in the regulations has resulted in the elimination of necessary agency discretion. One commenter explained, "Flexibility in the regulations that allows for some discretion on the part of the auditing agency is necessary."

MMS Response: The MMS disagrees that the rules eliminate necessary agency discretion. For example, §§ 206.259(b) [now designated § 206.257(d)] and 206.259(d) [now designated § 206.257(d)] provide for MMS to establish a value for royalty purposes if a determination is made that the lessee's reported value is inconsistent with the requirements of the regulations. Similar provisions for MMS's adjustment of coal washing and transportation allowances are provided §§ 206.260 and 206.262 [now designated §§ 206.259 and 206.262]. Also, in response to these comments, additional language has been added to § 206.259(b) [now designated—§ 206.257(b)] which now allows MMS to determine if the sales contract reflects the total consideration actually transferred, either directly or indirectly, from the buyer to seller and also to determine if certain factors would render the sales contract to be deemed non-arm's-length.

IV. Section-by-Section Analysis

Many of the sections have not changed significantly from the January 1987 notice of proposed rulemaking. This preamble primarily will focus on the significant changed sections.

Proposed § 206.250 Purpose and Scope.

This section would provide that if the provisions of any statute, treaty, lease, *or* settlement agreement (resulting from administrative or judicial litigation) are inconsistent with any of the regulations, then the statute, treaty, lease, or settlement agreement provision governs to the extent of the inconsistency.

Paragraph (d) has been revised so that it would specifically refer to the trust responsibility of the United States with respect to the administration of Indian coal leases.

Proposed § 206.251 Definitions.

Comment: Some industry respondents recommended deletion of the words "amount or" from the proposed definition of "ad valorem lease." One commenter explained: "Amount of production is only relevant in a take-in-kind royalty provisions [sic]. There is no authorization for such a provision in the MLA [Minerals Leasing Act of 1920, as amended]."

MMS Response: The phrase "based upon a percentage of the amount or value of the production" is appropriate because Indian leases may be designated to include a royalty-in-kind proviso. Because these rules would be equally applicable to Federal and Indian coal production, it is proper to include regulatory language that provides for this possibility.

Comment: The phrase "Coal washing allowance" appears in these proposed rules as an integral part of the definition of "Allowance." Many industry respondents recommended expanding the scope of the definition and changing the term "coal washing allowance" to "coal processing allowance." One commenter stated this change was necessary to be consistent with the

proposed revisions to § 206.260 [now designated §§ 206.258 and 206.259]. Many other commenters supported the proposed expansion for various similar reasons including the suggestions that "an allowance should be extended to all processing costs incurred downstream from the point or royalty determination" and to "other methods of beneficiation which may increase the value of coal . . . ." Examples provided as other forms of procesing included pelletizing, treatment with chemicals or oil, drying, crushing, and sizing.

MMS Response: The MMS acknowledges the existence of developing coal quality enhancement techniques other than the commercially available coal washing process. However, rather than transplant coal washing allowance procedures to other coal beneficiation technologies, MMS believes it is preferable to provide a rule that recognizes coal beneficiation processes other than coal washing for royalty valuation purposes. A new § 206.265 has been added to these proposed rules to address these comments. The discussion of § 260.265 appears later in this preamble.

Comment: One Indian commenter recommended deleting "all references to washing allowances," and maintained that the basic premise of the regulations is that the lessee "is obligated to place the mineral in its first marketable condition." In support of this position, this commenter stated: "The incorporation of a practice which is primarily a conservation measure does not belong in regulations to value the product for royalty purposes." This commenter concluded that such decisions as approving washing allowances be the responsibility of "the agency leasing the minerals."

MMS Response: Coal washing is not necessarily practiced as an exclusive conservation measure. It is feasible for coal operators to wash coal to upgrade a first marketable product. Because the net effect of coal washing is to increase heat content and to provide a cleaner burning product by removal of ash and sulfur, an operator may desire to wash coal to extend its market reach or expand its potential customer base. The MMS considers any attempt to differentiate between washing as a conservation measure (to develop a first marketable product) and washing as a marketing tactic to be a needless expenditure of MMS's limited manpower resources. Allowances have been provided to coal lessees that wash Federal or Indian coal since the inception of ad valorem royalty rates. These rules increase the level of detail necessary to obtain coal washing allowances but otherwise would continue existing policy.

Comment: Some industry comments recommended deleting the "reasonableness" standard. The proposed definition provided for a coal washing allowance based on the "reasonable, actual costs." One commenter explained that "there is no indication of what would be considered reasonable or unreasonable. We believe that the concept of 'reasonableness' is inherent in all of the lessee's obligations under these regulations."

MMS Response: The MMS normally considers any cost incurred for coal washing or transportation that is out of proportion to standard industy practices to be unreasonable. However, this statement may be tempered by the specific situation that created the unusual and unreasonable costs. In any event, because the commenter acknowledges that the concept of reasonableness is present in all lessee's obligations, it seems no greater an imposition to explicitly state the term in the regulation.

The phrase "Transportation allowance" also appears in these rules as an integral part of the definition of "Allowance." Several industry respondents provided comments on this proposed definition. Many of the same comments were received as dicusssed above with respect to the phrase "coal washing allowance." These will not be addressed again.

Comment: One industry commenter recommeded "that the final regulations should be amended to provide an allowance for *all* transportation costs." No elaboration or explanation was provided.

MMS Response: The MMS has no intent to provide transportation allowances for routine in-mine transportation costs, which every mining operation encounters to some degree. In-mine transportation is an integral part of the total mining process, the cost of which the Federal or Indian owner has historically not shared. Additional discussion of transportation allowances appears later in this preamble. The MMS notes, however, that under the definition of "mine," no allowance would be approved for coal transported between mine facilities, including, for instance, transportation between the pit (or portals, in the case of an underground mine) and the crusher, or for transfer from the crusher to other mine surface facilities, including the storage and loadout facility.

Comment: The MMS received numerous comments on the definition of "arm's-length contract." "Arm's-length contract" would be defined as a contract or agreement that has been arrived at in the marketplace between independent, nonaffiliated persons with opposing economic interests regarding that contract. Affiliation essentially would be a control test: ownership in excess of 50 percent constitutes control; ownership of 10 through 50 percent creates a presumption of control; and ownership of less than 10 percent creates a presumption of noncontrol which MMS can rebut. Contracts between relatives would not be arm's-length contracts. To be considered arm's-length for any production month, a contract must meet the requirements of the definition for that month as well as when the contract was executed. Thus, if two contracting parties were not affiliated when the contract was executed, but are affiliated now, the contract would be non-arm's-length.

The definition of gross proceeds received more comments than any other section of the proposed regulations. Thirty-nine respondents, consisting of industry representatives, one local government association, and one State, specifically supported MMS's proposed deletion of reimbursements for Black Lung Excise Taxes and Abandoned Mine Land Reclamation Fees (AML) from the gross proceeds definition. One industry respondent explained: "The exclusion of Abandoned Mine Reclamation (AML) fees and Black Lung (BL) taxes is appropriate as they add no enhancement to the real value of the coal." Another industry commenter noted support for "Secretary Hodel's proposal to exclude those reimbursables [Federal Black Lung Taxes and Abandoned Mine Lands Fees] from gross proceeds on the grounds that it is inequitable to require lessees to pay royalties on levies imposed by federal, state, or local governments solely to mine coal." Many other respondents repeated this rationale. One industry respondent offered a somewhat different reasoning by stating that it was appropriate for MMS to take action to "enhance the competitiveness of Federal and Tribal coal, and hence the viability of the domestic coal industry."

Eighteen respondents, consisting of 14 State organizations and 4 Indian groups, opposed the exclusion of *any* reimbursed taxes or fees from gross proceeds. Most respondents maintained that MMS's explanation of why Black Lung Excise Taxes and AML fees are excluded from gross proceeds was not sufficient or acceptable. One Indian respondent specifically commented that MMS's justification for exclusion was

not true with respect to Indians, who do not set the rate of either the Black Lung Excise Tax or the AML fee. The respondent further noted that AML fees have not been made available to Indian lands. A State respondent commented: "These fees are essentially a pass-through, the lessee does receive the benefit of the purchaser reimbursing him * * *." These costs would otherwise be borne by the lessee. Another State respondent claimed: "The MMS proposal would have the effect of reducing royalties on coal without going through the findings required under the Minerals Leasing Act, 30 U.S.C. 209." One other State respondent concurred with this statement. Several other State respondents objected to the exclusion of Black Lung Excise Taxes and AML fees on the grounds that it sets a precedent and "opens the door for the exclusion of other items * * *."

Over 50 industry and 2 States respondents submitted comments requesting that MMS extend the exclusion of Black Lung Excise Taxes and AML fees to other similar taxes and fees that are normally assessed at the State and local levels. One particular industry commenter explained that "The lessee receives no additional value from these payments which are only incidentally related to the value of the coal through the tax structure. In fact, by adding these taxes to the value of coal, the government is directly placing taxes on taxes and improperly inflating the royalty payment." Many other industry comments concurred with the "taxes on taxes" objection and stated that this royalty practice was not the intent of the MLA. Three industry respondents stated that MMS's proposed definition was inconsistent with the recommendation contained in the Linowes Commission report entitled "Fair Market Value Policy for Federal Coal Leasing." As noted by one commenter, "The Commission recommended that 'the base for calculating Federal royalty payments should be f.o.b. price minus all State and local severance and similar taxes.' "

MMS Response: The MMS has considered both the comments calling for the reinstatement of reimbursements for the Black Lung Excise Tax and AML fees into the value basis for royalty computation, and all comments requesting the further exclusion of all other reimbursements for State and local imposed taxes and fees from the value basis of Federal and Indian coal. The MMS has determined that the definition of gross proceeds is not the place to address issues as to whether certain payments are royalty-bearing. There is no doubt that when the purchaser pays $10/ton for coal, that is the lessee's gross proceeds. Whether all of that $10 is royalty-bearing is a separate issue and is addressed below in § 206.257(b).

Comment: Many commenters, including States, Indians, and industry, commented that they favored recognizing all forms of consideration received by the lessee for purposes of valuing Federal and Indian coal. Some industry respondents opposed the concept of including all forms of consideration, other than the sales price, as part of gross proceeds. One industry commenter stated that its firm "provides substantial water to power plant customers buying coal, without separate consideration for the water." Another industry commenter stated that the concept of collecting royalty on all consideration was logical, but that MMS was carrying the idea to an extreme. The commenter maintained: "There may be occasions when there truly is significant consideration given to the seller which is not included in the actual sales price of the coal. When that is the case, then there is justification to collect royalty on such consideration." This commenter concluded, however, that the proposed rules do not define what is significant.

MMS Response: The MMS has always required royalty to be paid on all components of coal value, including those components of a coal sales agreement that are not in the form of cash and imbedded in the price. As stated in the January 15, 1987, proposed rulemaking, "The definition of gross proceeds is intended to be expansive to ensure that it includes all the benefits flowing from the purchaser to, or on behalf of, the seller for the disposition of the coal, * * *."

Comment: Eleven industry commenters stated that the use of "gross proceeds valuation" does not have a basis in law. One commenter supported this position by stating that, "The words 'gross proceeds' do not appear in the Mineral Leasing Act of 1920. Section 7 of the Act, as amended in 1976, established a royalty based on coal's value." This reasoning was expressed as support in other comments.

MMS Response: Section 7 of the MLA, as amended by FCLAA, requires royalty to be paid on "the value of coal as defined by regulation." The regulations in effect since 1976 have required royalty to be based on "gross value." Although the "gross proceeds" term herein is new, it is not forwarding a new concept. The selection of the term "gross proceeds" is to assure regulatory consistency within MMS and is an excercise of discretion provided by statute. However, as discussed further below with regard to § 206.157, MMS is proposing certain adjustments to the value of coal.

Comment: Some industry commenters stated that MMS should not use the gross proceeds established under contracts signed in the 1970's. One respondent commented that "These negotiated coal prices are over-inflated and not indicative of fair market value. They were contracted during the 'oil crisis' and the moratoriums on federal coal leasing." The commenter advocates that MMS "should develop a method that takes into account the average coal price at each mine and does not consider these 1970's contracts as indicative of fair market value." Another industry commenter offered an alternative proposal where royalty would be based on the average price of a geographic area if "the current 'arm's-length' price exceeds the average price for coal sold in the same geographic area by 20 percent or more * * *."

MMS Response: For arm's-length contracts, MMS does not believe that there is any justification for receiving a royalty based on less than a contract sales price. The lessee receives the benefit of a higher price and the royalty owner is entitled to share in that benefit. For non-arm's-length situations, a possible exception is addressed later in this preamble.

Comment: The MMS received many comments from industry respondents stating that all preparation costs should be excluded from the royalty value. One commenter stated that the value should include "payments to the lessee for the extraction, primary crushing, storing, mixing, and loading coal * * *. We recommend the exclusion of reimbursements for secondary processing and beneficiation, such as oiling to suppress dust or freeze prevention chemical treatment * * *." Several commenters recommended excluding from the value for royalty purposes "processing in excess of that which is necessary to bring coal to the first point of marketability." Other commenters stated that coal should be valued "from where it's taken off, the mine at the face * * *." One commenter continued to explain that "various forms of cleaning or other treatment do not add to the value of the product at the mine." Other commenters suggested a similar approach with one stating that it was inappropriate for MMS "to collect a royalty on the increased value * * * from * * * crushing, storing, mixing loading [sic], treatment

with substances including chemicals or oil, and other preparation of the coal * * *."

MMS Response: The proposed rulemaking would maintain the status quo of MMS policy. Standard mining and preparation costs would be considered as part of the mine operation and not be deductible from royalty. Hence, under the approach of the rules, expenses arising from separating the coal from the seam, hauling coal from the surface pit or underground face to other mine facilities, crushing coal, sizing or screening coal, storing coal while awaiting shipment, spraying with oil or with coal antifreeze treatment chemicals, and loading coal at the point of shipment to market would be borne 100 percent by the lessee and could not be deducted from royalties.

Comment: One industry commenter stated that it was more reasonable to maintain MMS's current gross value requirement, which is the unit sale or contract price times the number of units sold.

MMS Response: The MMS noted earlier that the concept of coal valuation remains unchanged. The term "gross proceeds" has been selected for purposes of regulatory consistency.

Comment: The MMS received many comments concerning the inclusion of take-or-pay payments in the proposed gross proceeds definition. Four commenters, two Indian and two States, expressed support for the inclusion of take-or-pay payments as part of gross proceeds. One commenter reasoned that the inclusion was proper "since the other contractual terms may be affected by inclusion of such language in the selling agreement." Another commenter stated that gross proceeds "does not simply mean the amount received by the lessee. Rather, it must have an expansive definition to include any consideration * * * including any minimum payments, stand-by fees, or take-or-pay payments." Other commenters recommended that the gross proceeds definition stand as proposed with respect to including take-or-pay payments, but offered no additional reasoning or support.

Industry commenters generally opposed the collection of royalty on take-or-pay payments. Several commenters specifically stated that royalty is due only on production; others specifically stated that MMS lacked statutory support to collect royalty on take-or-pay payments; and some commenters stated that royalty should be collected on take-or-pay payments only under certain circumstances. With respect to the issue that royalty is only due on production, one commenter explained that "if no coal is produced, there is no diminution in the value of the coal reserve and therefore no royalty should be payable." Several other commenters took the same position. Another commenter stated that the "assessment of royalties on take-or-pay payments is inconsistent with the traditional framework for royalty payments * * *. The royalty becomes due only when coal is mined." Many commenters urged that the take-or-pay payment serves as a mechanism to cover the producer's investment risk and as such does not constitute a prepayment for Federal coal. Several commenters continued by stating that the Government has no right to share in the rewards resulting from risk of the capital investment. Several commenters declared that the proposed regulations were internally inconsistent, with certain parts requiring royalties to be paid on take-or-pay payments not related to coal production, while other parts such as §§ 206.259, 206.255, and 206.257 [now designated §§ 206.257, 206.253, and 206.255, respectively] required royalty to be paid on coal produced and sold or otherwise finally disposed of. One commenter also suggested that MMS adopt a wait-and-see position and let the courts decide the legality of collecting royalty or take-or-pay issues.

With regard to the comments citing MMS's lack of statutory support to collect royalties on take-or-pay payments, one commenter noted that "The plain language of FCLAA (30 U.S.C. 207) ties royalty assessment to the value of recovered coal." Other commenters echoed this view. Another commenter stated that the MLA does not allow royalty collection "on coal not mined, produced and sold." Another commenter stated that "The statutory authority to include in production royalties payments made on 'take-or-pay' provisions as if they were 'advance royalties' is certainly subject to question." The commenter further noted that payment of advance royalties is controlled by 30 U.S.C. 207(b). The commenter concluded: "Since advance royalties can only be accepted in lieu of continued operation—one percent of commercial quantities of recoverable coal reserves * * * if an operator is producing the required one percent, section 6 [of FCLAA] would prohibit the lessee from reducing his production royalty payment by the amount of his 'take-or-pay' payment, since these payments are not, by statute, considered 'advance royalties.'"

As noted earlier, several commenters agreed that under certain conditions royalty should be collected on take-or-pay payments. One Industry commenter stated: "Some payments received under 'take-or-pay' clauses may well constitute payments for the disposition of coal produced by the lessee, and in such cases we agree that they should be subject to royalty."

Other industry commenters objected to collecting royalty on any other contractually required compensatory payments, other than take-or-pay, which are not based on coal production. The commenters referred to such payments as assignment payments, prepaid reserve payments, damages awarded by courts, by-outs, bonuses, and capacity charges.

MMS Response: By collecting royalties on "take-or-pay" payments, MMS is not departing from existing coal royalty valuation policy. The collection of royalty has always been based on the total value of coal sold. The MMS and its predecessor agency, Conservation Division, U.S. Geological Survey, have never permitted royalty to be paid on values reduced by prior take-or-pay payments. The proposed regulation's definition of gross proceeds represented a clarification of existing policy and practice. However, MMS does agree that no royalty should be paid on a payment which is not for production. See discussion below related to § 206.157(b)(6).

The proposed definition of "gross proceeds" has been modified to include the total monies and other consideration "accruing" to the lessee. Because the definition of arm's-length contract does not include any provisions which address the concept that such contracts must reflect the entirety of the agreement between the parties, MMS concluded that the definition of gross proceeds should be sufficiently broad to encompass all consideration to which the lessee is entitled. The term "accruing" would be intended to accomplish that purpose.

Comment: Several industry respondents provided comments regarding the proposed definition of "marketable condition." One commenter described the definition as being so subjective that it was meaningless. Four commenters stated that MMS should regard coal as being in marketable condition if sold and accepted by the purchaser. One commenter requested clarification of the meaning of the phrase "typical sales contract," stating "there is no such thing as a typical sales contract for an area * * *." One commenter requested that the entire definition, as proposed, be deleted. Two commenters suggested an alternative definition seeking to define coal as

being in marketable condition when it has been extracted, crushed, and screened. No other processing of coal would be deemed necessary before being considered marketable.

MMS Response: The proposed definition was modified for purposes of clarity. The thrust of the definition is unchanged, as an explicit notice that MMS will not accept, as an appropriate value for royalty purposes, any value paid for coal which has not been conditioned to meet the minimum recognized market standard.

Finally, the definition of "net-back method" has been revised in the proposed rules so that it would be clear that the net-back procedure is to begin from the first downstream point at which value could be ascertained by reference to arm's-length contracts or other comparable sales.

Proposed § 206.253 Coal subject to royalty—general provisions.

This section has not been changed signficantly from the first proposed rulemaking.

Proposed § 206.254 Quality and quantity measurement standards for reporting and paying royalties.

This section has not been changed significantly.

Proposed § 206.255 Point of royalty determination.

This section has not been changed significantly from the first proposed rulemaking. The term "used" has been added to make it clear that use of coal by the lessee triggers the royalty payment obligation.

Proposed § 206.256 Valuation standards for cents-per-ton leases.

This section has not been changed significantly from the first proposed rulemaking

Proposed § 206.257 Valuation Standards for ad valorem leases.

The fundamental approach of this section is the same as in the first proposed rulemaking. However, several changes have been incorporated.

Paragraph (a) has been modified slightly. It would continue to provide that value for royalty purposes is the value determined pursuant to this section less applicable coal washing and transportation allowances, or any other applicable allowances for beneficiation. See discussion of § 206.255, above. The paragraph would clarify that the royalty due is equal to the value for royalty purposes multiplied by the royalty rate in the lease.

Paragraph (b) still would provide that the value of coal which is sold pursuant to an arm's-length contract will be the gross proceeds accruing to the lessee. Under MMS's existing regulations in 30 CFR 203.250, the lessee's gross proceeds pursuant to an arm's-length contract are acceptable as the value for royalty purposes. The MMS believes that the gross proceeds standard should be applied to arm's-length sales for several reasons. The MMS typically accepts this value because it is well grounded in the realities of the marketplace where, in most instances, the ⅞ths owner will strive to obtain the highest attainable price for the coal production for its own benefit. The royalty owner benefits from this incentive.

It also adds more certainty to the valuation process for payors and provides them with a clear and logical value on which to base royalties. Under the proposed regulations, in most instances, the lessee will not need to be concerned that several years after the production has been sold MMS will establish royalty value in excess of the arm's-length contract proceeds, thereby imposing a potential hardship on the lessee. This is particularly a concern for lessees who have long-term arm's-length contracts where sales prices under newer contracts may be higher. If MMS were to establish royalty value based on prices under those newer contracts, (*i.e.*, prices which the lessee cannot obtain under its contract), the resulting royalty obligation could consume a larger percentage of the lessee's proceeds.

Establishing gross proceeds under an arm's-length contract as the royalty value also has benefits for MMS and those States that assist MMS in the audit and enforcement efforts. The gross proceeds standard would give auditors an objective basis for measuring lessee compliance. It would reduce audit workload and reduce the administrative appeal burden that results when valuation standards are too subjective, particularly when values are determined to be in excess of a lessee's arm's-length contract gross proceeds.

The MMS recognizes, however, that there must be exceptions to the general rule that the lessee's arm's-length contract price should be accepted without question as the value for royalty purposes. One such situation is where the contract does not reflect all of the consideration flowing either directly or indirectly from the buyer to the seller. For example, in return for Seller's reduced price for coal production from a Federal lease, Buyer may agree to reduce the price of coal it sells to Seller's affiliate from a non-Federal lease. This agreement is not reflected in the coal sales contract for the Federal coal. In the event that MMS becomes aware of consideration that exists outside the contract, MMS would adjust the lessee's gross proceeds to reflect the additional consideration. However, in some circumstances the additional consideration may not be easily calculable. Thus, even if the parties are not affiliated and the contract is "arm's-length," MMS could require in paragraph (b)(2) that the coal production be valued in accordance with paragraph (c), the standards used to value coal disposed of under non-arm's-length contracts. Under these standards, the lessee's gross proceeds still may determine value, but the lessee will be required to demonstrate comparability to other arm's-length contracts.

The MMS recognizes that some parties may have multiple contracts with one another. This fact alone would not cause a contract to be treated as non-arm's-length. Rather, there must be some indication that the contract in question does not reflect the full agreement between the parties. The proposed regulations also include a provision in paragraph (b)(4) whereby MMS may require a lessee to certify that the terms of its arm's-length contract reflect all the consideration flowing from the buyer to the seller for the coal. The MMS is proposing to include this provision because there may be circumstances where an auditor could not reasonably be expected to find other consideration, yet there is good reason to believe it exists. Because of the potentially severe penalties for a false certification, this will assure that no other consideration exists when the certification is received.

In other situations it may not be apparent why an arm's-length contract price is unusually low, yet the lessor should not accept the arm's-length contract proceeds as value. It may be because of collusion between the buyer and seller or improper conduct by the seller, or it could be the result of a patently imprudent contract. Even if the contract is between unaffiliated persons and thus "arm's-length," pursuant to paragraph (b)(3), if MMS determines that the gross proceeds do not reflect the reasonable value of the production because of misconduct by the contracting parties or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS could require that the coal production be valued pursuant to paragraphs (c)(2) (ii) through (v). Thus, MMS first must determine that a price is unreasonable; for example, by looking at

comparable contracts and sales. Then MMS must determine that the unreasonably low price was the result of misconduct or a breach by the lessee of its duty to market its production for the mutual benefit of itself and the lessor.

A breach of the lessee's duty to market production to the mutual benefit of the lessor would include, but is not limited to, collusion between the producer/seller and buyer, pricing practices found by a court or regulatory authority to be incorrect or fraudulently manipulated, or negligence in negotiating contracts. The MMS would give a lessee an opportunity to comment when it determines the lessee has breached its duty to market the coal for the mutual benefit of the lessee and the lessor.

The suggestion that the Secretary should determine whether each contract is arm's-length or non-arm's-length was implied in the rules. However, the MMS has added a clarifying provision to paragraph (b)(1) of the proposed rule which would provide that the lessee will have the burden of demonstrating that its contract is arm's-length. This includes overcoming presumptions of control where two parties are possibly affiliated.

The MMS has determined that the phrase "or which could accrue" should be deleted in reference to gross proceeds in paragraph (b)(1). Many commenters on other product value rules thought that this phrase would allow MMS to second-guess the price which the lessee agreed to in its contract by arguing that other persons selling the same product may have received higher prices—thus, more proceeds "could have accrued" to the lessee. This was not MMS's purpose in including the "or which could accrue" language in the proposed rule. Rather, MMS's intent is to ensure that royalties are paid on the full amount to which the lessee is entitled under its contract, not just on the amount of money it may actually receive from its purchaser. However, MMS is satisfied that the phrase "the gross proceeds accruing to the lessee" properly includes all consideration to which the lessee is entitled under its contract, not necessarily just what it actually receives from the buyer. Therefore, the "or which could accrue" phrase was unnecessary. Because it caused confusion as to MMS's intent, it is being deleted from the proposed rule.

Comment: Many industry and State respondents provided comments on alternative valuation methods other than gross proceeds. Several commenters from industry advocated adopting some form of a cents-per-million British thermal units (Btu) valuation procedure. This valuation procedure would establish a value for Federal and Indian coal based exclusively on the coal's heating value and would be expressed in cents-per-million Btu. The actual sale price would not be relevant, nor would other factors such as distance to market or other quality parameters. In general, these commenters claimed that this valuation method was simple and fair and that the value would be based on the intrinsic heating value of the coal. One commenter stated that the cents-per-million Btu valuation method "would eliminate the unfairness, inequities and disparities created by an *ad valorem* rate." A number of variations on the theme of cents-per-million Btu valuation were offered. Some commenters recommended initially fixing the dollar amount per million Btu and then adjusting "for inflation or deflation at regular intervals" by use of an "appropriate index." One commenter specified that whatever index was used "could be set nationally." One commenter stated that MMS should use a cents-per-million Btu base value, but "this value should reflect the 'value of the coal at the mine mouth.' " One industry and one State respondent opposed using a cents-per-million Btu royalty valuation method. The State commenter noted that the concept was not simple, because to make the method fair "you would have to bring some other quality factors into the coal that are going to have an effect on the value of it at the burner." The industry commenter expressed concern about abandoning the free market concept. One other industry commenter suggested that the first sentence of paragraph (b) be rewritten to read: "The value of coal for royalty purposes shall be determined by the MMS on the basis of Btus per ton on a regional basis through regulation that sets fair and reasonable values." The commenter elaborated, stating that value should be independent of factors such as time of contract execution, contract provisions, unit taxes, and transportation competitiveness.

MMS Response: The basic premise of MMS's royalty calculation methods is that royalty should be based on the value received by the lessee under an arm's-length contract for selling the coal (less allowances). The Btu-based royalty concept is neither easy to implement nor conducive to equitable administration. It is not easy to implement because MMS would be charged with the responsibility to establish, using some rational method, an initial value per million Btu. The MMS believes such an undertaking could easily consume all the limited manpower resources of MMS without achieving an initial credible and tenable value. The Btu-based royalty concept would be inequitable to many lessees because the royalty value would be unresponsive to the sulfur content or other quality parameters affecting the value of Federal or Indian coal. The MMS maintains that the free market value established by an arm's-length sale is the best measure of coal value for royalty purposes.

As discussed above, MMS is proposing as an option for public comment a paragraph (b)(5) which would provide that notwithstanding the provisions of any other regulations in Subpart F, the value of coal would be reduced by the amounts of Federal Black Lung Excise Taxes and Abandoned Mine Lands Fees (AML fees) authorized by the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*), which are paid for the coal. Thus, if a coal contract provides that the purchaser is to reimburse the lessee for Black Lung and AML fees, those amounts would be part of gross proceeds, but paragraph (b)(5) nevertheless would not require the payment of royalty on those amounts. Similarly, even if a coal contract does not have a separate reimbursement clause, the lessee could reduce the value of coal for royalty payment purposes by the amount of Black Lung and AML fees the lessee is required to pay for the coal production. For example, if the lessee's arm's-length contract requires a flat payment of $5.00 per ton, then $5.00 is the lessee's gross proceeds. However, if the lessee is required to pay $0.57 in Black Lung and AML fees, then the effect of paragraph (b)(5) would be to reduce the value of the coal to $4.43.

While it is well-established that the lessee's gross proceeds include all payments for coal production, including reimbursements received either directly or indirectly by the lessee (*see, e.g. Knife River Coal Mining Co.*, 29 IBLA 26 (Feb. 8, 1977); *Knife River Coal Mining Co.*, 43 IBLA 104 (Sept. 24, 1979); and *Hoover & Bracken Energies, Inc.* v. *DOI*, 723 F.2d 1488 (10th Cir. 1983), *cert. denied*, 469 U.S. 821 (1984)), payments for Black Lung and AML fees are distinguishable from other types of fees or costs imposed on coal producers or on coal production because these are fees imposed by the Federal Government, the lessor. Thus, the lessor could raise its royalty revenues by imposing or increasing such fees. For this reason, MMS would like comment on whether it would be appropriate to reduce the value of coal for royalty payment purposes by the amounts the

lessee must pay for such fees and, therefore, pass on to its purchaser.

The MMS also is proposing that the provisions of paragraph (b)(5) would not be applicable to Indian tribal and allotted leases. It is MMS's intention that these rules be revenue neutral for Indian leases. Also, since the Indian lessor does not impose the AML and Black Lung taxes, the above-stated rationale for excluding these fees from royalty value (*i.e.*, that the lessor can increase royalties by imposing or increasing these taxes) does not apply to Indian leases. The MMS specifically would like comment whether the proposed exclusion language will be sufficient to ensure that the exception provided by paragraph (b)(5) will not be applicable to existing Indian leases.

The MMS received many comments that the value of coal also should be reduced by amounts for State severance taxes. Most of the arguments were similar to those for the AML fee and Black Lung Tax exclusion. Although excluding severance taxes from value would be a departure from long established Departmental policy, MMS would like further comment on whether it should add a deduction for State severance taxes to paragraph (b)(5). It would be MMS's intent not to grant a deduction for State severance taxes from the value applicable to coal production from Indian leases.

The MMS received many comments from industry that it is inappropriate to impose a royalty burden on that portion of the value of coal which becomes the royalty payment; *i.e.*, industry claims that a royalty on royalty is unfair. This issue can best be understood by an example. Assume a lease with a 12.5 percent royalty rate. Assume that the lessee sells 100,000 tons of coal under an arm's-length contract at $10 per ton for a total of $1,000,000. Historically, MMS would consider the value for royalty purposes to be the $1,000,000 and would require a royalty payment of 12.5 percent or $125,000.

Those who advocate that it is unfair to pay royalty on royalty first would divide the proceeds by 1.125 to remove the royalty portion of the proceeds ($1,000,000 divided by 1.125 = $888,888.88). The result then would be multiplied by the royalty rate to determine the royalty payment ($888,888.88 × .125 = $111,111.11). The MMS is not proposing regulatory language on this suggested exclusion but, in view of the many comments received, MMS would like public comment on whether it should include in the final rule a provision which would reduce the value of coal by an amount equal to the difference between: (1) the value of the coal; and (2) the value of the coal divided by (1 + the royalty rate). This provision also would result in reduced royalty values in situations where the lessee has a royalty reimbursement provision in its contract.

As discussed above, the definition of gross proceeds includes payments made under take-or-pay clauses in contracts and similar clauses which MMS considers to be consideration for production. Paragraph (b)(6) would reflect the fact that the purchaser may make certain payments to a lessee under the contract that are not part of the total amount or consideration which the purchaser pays for the purchase of the product. For example, payments made for lessee provided services that are totally unrelated to the production and sale of coal would not be regarded as part of the total effective price paid for coal purchases under the contract. By way of contrast, if the contract required the purchaser to continue to make payments for certain mine operation costs, such payments would be royalty-bearing.

The MMS recognizes that coal sales contracts may contain provisions that are unique in form to that contract and the effect of which must be examined on the specific facts of the transaction. Ordinarily, payments made under contract clauses that allocate the risk of production and the risk of market demand and ensure a minimum return to the seller for the sale of the product (i.e., take-or-pay clauses and similar clauses) are part of the total consideration paid for the product and are royalty-bearing. In all instances, the substance of the contract clause or payment involved, and not its form, will control.

In the comments received from industry, many different types of payments were identified and questions raised as to whether they would be royalty bearing. These include:

1. Damages recovered under a court judgment for the purchaser's breach of the sales contract;

2. Payments made under a force majeure clause;

3. "Settlement" payments made to terminate a sales contract before the contractually-specified termination date; this includes situations where there may or may not be a follow-on contract;

4. Payments for assignment of an interest in the lease;

5. Payments not designated as part of the purchase price but made on a periodic or regularly scheduled basis under the contract;

6. Payments not designated as part of the purchase price, which may or may not vary with the amount of coal delivered, and paid on a one-time or not regularly scheduled basis under the contract in a specific sum or calculated under a prescribed formula;

7. Payments or reimbursements for services or processing costs customarily the responsibility of the lessee, including that required to put the product in marketable condition;

8. Minimum payment obligations, price guarantees, or deficiency charges; and

9. Payments which are accepted by public service commissions as made for purposes other than for coal received.

The MMS specifically solicits comment on whether payments or reimbursements in these categories constitute part of the total consideration paid for the purchase of the product. Under the proposed provision, the lessee would have the opportunity to demonstrate that, under the terms of its contract, the payment made was not part of the consideration for production. However, unless MMS concurs with the lessee's position, royalty payment will be due on that payment.

Paragraph (c) would apply to coal production that is not sold pursuant to an arm's-length contract. Valuation benchmarks would have to be considered in the prescribed order with the value based upon the first applicable benchmark. The first benchmark is still based upon the lessee's gross proceeds from the disposition of the coal. However, the proposed rule has been modifed so that, before the lessee's gross proceeds would be acceptable as value, they must be equivalent not just to the gross proceeds under the lessee's other arm's-length contracts, but they must be equivalent to the gross proceeds under arm's-length contracts involving other buyers and sellers in the area. The effect of this change is to combine what previously were the first and second benchmarks and broaden the base of comparability in the first benchmark. The other provisions of the first benchmark, including the comparability criteria, are not changed.

Where value is determined based on the benchmarks, the adjustments from §§ 206.257(b) (5) and (6), if adopted, would apply. These adjustments, which have been proposed for comment, relate to amounts for such costs as AML fees, Black Lung Taxes, State severance taxes, and the royalty-on-royalty issue. This would apply both where there is a reimbursement clause for these costs and where the cost is embedded in a net price. In some cases it may not be appropriate to make any further deduction for these items, for example, where the value determined under the

benchmarks already does not include a state severance tax component.

The MMS received many comments on the benchmarks. However, there was no one issue that received considerable comment. The MMS will address the comments in the final rulemaking.

The remaining benchmarks for valuing coal disposed of under non-arm's-length contracts were not changed.

It has come to MMS's attention that there may exist a disparity between the current market value of coal and the prices for coal paid under contracts between affiliates (e.g., a coal mining company owned by an electric utility) which, in many instances, are based on mining costs. In today's environment, mining costs often exceed the price for which coal can be sold in the marketplace. Some coal industry members have questioned whether it is reasonable to use these "gross proceeds" as a royalty value, or whether value should be based upon factors that more contemporaneously reflect the coal's value in the open market.

For mine-mouth or captive mine situations, the coal industry has commented that in today's weak market MMS should not receive a royalty computed on a cost-based contract that exists between affiliates. Therefore, MMS specifically requests comments on whether the final rules should include a provision whereby royalty value for non-arm's-length sales in mine mouth or captive mine situations should be based principally on current market determinants (such as spot prices) which several coal industry commenters advocated.

Paragraph (d) has been modified from the first proposal. Paragraph (d)(1) still would provide that value determinations under paragraph (c) do not require MMS's prior approval. However, the lessee would be required to retain all data that would be subject to review and audit. The MMS could direct a lessee to use a different value if it determines that the lessee's reported value is inconsistent with the requirements of the regulations.

Paragraph (d)(2) would require a lessee to make sales and sales quantity data available to authorized MMS, State, and Indian representatives, to the Inspector General of the Department of the Interior, and to other authorized persons.

Paragraph (d)(3) would continue to provide a notification requirement if a lessee determined value using the second through fifth benchmarks.

Paragraph (e) has been added to clarify that if a lessee improperly determines value, it would be liable for both the additional royalties and interest.

The first proposed rule included a provision in paragraph (h) that lessees could request value determinations from MMS. That provision now is in paragraph (f).

Proposed paragraph (g) establishes gross proceeds as a minimum value. This provision is unchanged from the first proposal except that the specific reference to gross proceeds "which could accrue" was deleted. The reason for this change was discussed above with regard to paragraph (b)(1).

Paragraph (h), which requires the lessee to place coal in marketable condition at no cost to the lessor, is unchanged from the first proposal. The MMS specifically requests comments on whether or not this section, plus the definition of marketable condition, requires further development in these coal regulations to provide better guidance for the lessee. Commenters are requested to provide specific suggestions for changes to the regulatory language.

Paragraph (i) imposes a diligence requirement on lessees. This section would require a lessee to pay royalty in accordance with its contract price, but also expressly would recognize that contract prices may be amended retroactively. Retroactive price adjustments would be limited to 2 years. The MMS is aware that often there is a process of negotiation that occurs before the contract is formally amended and that lower payments may be received in the interim. Royalties may be paid on the gross proceeds received by the lessee until all reasonable attempts to force the purchaser to renegotiate the contract or to comply with the existing contract are exhausted, provided the lessee takes proper and timely action to receive prices or benefits to which it is entitled, or to revise the contract retroactively. Thus, the MMS will accept a renegotiated or a revised contract price if the main reason for renegotiating or revising the contract is not solely to reduce royalties. However, if a higher price can be legally enforceable under a contract and the lessee is not diligent in obtaining that price, royalties will be due on that higher price.

The MMS has added a new paragraph (j) to the proposed rules which would provide that, in those situations where MMS may make a preliminary value determination in the course of monitoring compliance with these regulations, the determination will not be binding until MMS has done an audit and the audit formally is closed. The MMS intends to issue further guidelines on when an audit is closed.

Paragraph (k) includes some minor changes to the paragraph originally proposed as paragraph (i).

Proposed § 206.258 Washing allowances—general.

The MMS received many comments on the limitations on washing allowances contained in the first proposed rule. Industry generally objected to any limit on allowances. Most State and Indian commenters thought the limits were not sufficiently restrictive. In this further notice of proposed rulemaking, MMS is not proposing a threshold requiring MMS approval to exceed that threshold. The purpose of a threshold is to assist MMS in monitoring allowances. Because there are few coal leases, and only a small number of those coal leases involve washing allowances, MMS does not believe that a threshold would be necessary to monitor the reasonableness of allowances. In fact, MMS is aware of only one instance where a washing allowance would have exceeded the threshold. The rules would continue to provide that a washing allowance could not reduce the value for royalty purposes to zero.

The MMS also has added a paragraph which would clarify that, if a lessee improperly determines a washing allowance, the lessee would be liable for any additional royalties plus interest.

Proposed § 206.259 Determination of washing allowances.

If a lessee has an arm's-length contract for coal washing under paragraph (a), the allowance would be the reasonable actual costs incurred by the lessee. This paragraph was not changed from the first proposal, but MMS has added two new paragraphs to address situations where a contract, though arm's-length, should be treated as non-arm's-length pursuant to paragraph (b). The first situation is where MMS determines that the coal washing contract reflects more than the consideration transferred from the lessee to the wash plant operator for the washing; i.e., the washing cost has been inflated. The second situation is where the MMS determines that there has been misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor. The types of misconduct or breach of duty that would trigger application of these provisions are essentially the same as those discussed above in the valuation section.

Paragraph (b), which is applicable to non-arm's-length coal washing situations, has not been changed significantly from the first proposal. It would continue to be a cost-based determination. The MMS has made some changes to the provisions relating to reporting of allowances in response to comments that the first proposal was somewhat unclear. Under paragraph (b)(1), no washing allowance may be taken before a Form MMS–4292 is filed. Washing allowances may be claimed retroactively for a period of 3 months prior to the month the form is filed. Thus, if a lessee takes an allowance for January, February, and March but does not file the form until April 15, the lessee will be entitled to the allowance but will owe interest for the time period that it was taken before it was authorized.

The MMS received many comments on the rate of return to be used in the cost computation. Paragraph (b)(2)(v) now would provide that the rate of return will be the industrial rate associated with Standard and Poor's BBB rating. This is the same rate adopted in the oil and gas rules, and the preambles provide an extensive explanation of this issue (Oil—53 FR 1212–1214; Gas—53 FR 1262–1263). However, as noted in those preambles, MMS is preparing a notice of proposed rulemaking to again address the rate of return issue.

In the gas processing regulations, MMS provided an exception to the cost-based approach in certain circumstances where the plant operator provides services under arm's-length contracts. See 30 CFR 206.159(b)(4). The MMS requests comments on whether or not a similar provision should be included for coal washing.

As noted above, MMS has modified the reporting requirements in paragraph (c). This paragraph generally is self-explanatory. One change is that washing allowances in effect on the effective date of the regulations would be allowed to continue until their termination date.

Section 206.260 Allocation of washed coal.

This section was not changed from the first proposal.

Proposed § 206.261 Transportation allowances—general.

This section would provide generally for a transportation allowance when coal is not sold at the mine or wash plant near the mine. The MMS received many comments on transportation allowances from industry, States and Indians.

Comment: Indian commenters recommended that paragraph (a) provide for a negotiated allowance for Indian lessors. One of these commenters explained that "certain transportation costs, unless cited in the lease, are a matter of negotiated settlement between the lessor and lessee and not subject to an arbitrary allowance." The other Indian commenter stated that transportation allowances were a reversal of past MMS practice and would be difficult to administer. This commenter stated, "Transportation costs should simply not be deducted from the value on which a company pays royalties to the Tribes."

MMS Response: The MMS and its predecessor agency, the Conservation Division, U.S. Geological Survey, have maintained a policy of providing coal transportation allowances to lessees that transport coal to distant points of sale at their own expense. As a matter of policy, MMS considers the assessment of ad valorem royalty on sale prices inclusive of value added by transportation to be an improper royalty practice leading to disincentives for the lessee to seek out and exploit all available markets. Unless specifically prohibited by lease terms, these rules would continue the past practice of allowing deductions for those selling arrangements that specify remote points of sale.

Comment: Paragraph (b)(1) of the original proposed rules, which establishes thresholds on transportation allowances, received numerous comments. Many industry commenters objected to any limit for transportation allowances. One industry commenter maintained that "Any standard other than actual transportation costs is arbitrary and places the burden on industry to then apply for a full deduction." Another industry commenter characterized the limit "to be an arbitrary amount intended for the sole purpose of increasing royalties." One industry commenter stated that "The coal mine operator should have the freedom to be able to market its product wherever possible without the requirement to obtain the approval of the Director when transportation costs exceed the value of the coal." Over 20 commenters offered similar rationales, most stating there was no justification to any limit.

One industry commenter suggested the 50- and 75-percent limits of the proposed rules "should be established as a guideline only so that MMS can freely exercise its authority to allow charges in excess of these amounts."

State and Indian respondents opposed the limits of paragraph (b)(1) citing that the limits are too high. A State commenter recommended reducing allowance limits to 33–35 percent and explained, "It has been our experience that published acceptable allowances or deductible expenses often become self fulfilling [sic] prophecies providing targets to be attained by some lessees." The Indian commenter maintained that the 75-percent limit for combined washing and transportation was too high and recommended that the limit not exceed 50 percent of the value of the coal.

MMS Response: The 50- and 75-percent transportation allowance thresholds that were initially proposed are not retained in these proposed rules. The purpose of a threshold is to assist MMS in monitoring the reasonableness of allowances. Because there are few coal leases, and only a few of those involve significant transportation allowances, MMS does not believe that a threshold or limit is necessary. The rules would provide that the allowances cannot reduce the value for royalty purposes to zero.

Comment: One Indian commenter stated the proposed regulations did not clearly prohibit leases with cents-per-ton royalty terms from receiving transportation allowances.

MMS Response: Allowances for cents-per-ton leases are specifically prohibited by the regulations at § 206.256(c).

Section 205.261(c) would provide that lessees would not be required to allocate costs between coal and waste products. Allowances would be permitted for the total tonnage transported, even for coal that is transported to a wash plant for washing.

The MMS has reviewed all the comments received to date. Section 206.262 is being proposed again with only minor modifications from the first proposal.

Proposed § 206.262 Determination of transportation allowances.

This section was proposed initially as paragraph (d) of the transportation allowance section. The MMS has added a separate section for clarity and to simplify numbering.

This section has not been changed significantly from the first proposed rules. Some changes were made to the reporting requirements and effective date mechanisms for ease of understanding. These and other changes are similar to those made to the washing allowance rules that were discussed above. Likewise, many of the comments received on this section were similar to those received for washing allowances.

such as comments addressing rate of return.

Pursuant to this section, MMS generally would accept arm's-length transportation costs. The MMS also has added two new paragraphs to address situations where a contract, though arm's-length, should be treated as non-arm's-length pursuant to paragraph (b). The first situation is where MMS determines that the transportation contract reflects more than the consideration transferred from the lessee to the transporter for the transportation; i.e., the transportation cost has been inflated. The second situation is where MMS determines that there has been misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor. The types of misconduct or breach of duty that would trigger application of these provisions are essentially the same as those discussed above in the valuation section.

For non-arm's-length contracts, the allowance generally would be based upon the lessee's reasonable actual costs for transportation. The cost calculation procedure has not been changed from the initial proposal. The MMS also is proposing to add a new paragraph (b)(3) whereby the lessee could apply to MMS for an exception from the requirement that it compute actual costs if the lessee has a transportation rate approved by a regulatory authority and the rate is not excessive as compared to other arm's-length contracts. If there are no other arm's-length contracts to use for comparison, other criteria apply.

The MMS also received some comments that provision should be made for new technology transportation systems which may justify a different type of allowance procedure or a means for modifying the proposed procedure, such as allowing for a greater rate of return on investment for the increased risk. The MMS would like comment on this issue, describing the new technology and what provisions should be added to the rules.

Discussion of the Coal and Electric Utility Industries' Proposal for Valuing Federal and Indian Coal.

On July 9, 1987, the Department reopened the coal comment period for 14 days. During this second comment period, the Department received additional significant comments from principal interested parties raising issues that merited further consideration and response from the public. To allow for this further consideration, the Department, once again, reopened the comment period on August 12, 1987, for 60 days to give interested persons an opportunity to obtain from DOI copies of three specific comments received from industry, State, and Indian representatives and then to provide a response for DOI to consider in developing a final rulemaking.

Comment: The industry comments were submitted as a joint proposal by six groups representing the coal producers and electric utilities. This proposal included a comprehensive, section-by-section set of revisions to the January proposed rulemaking, including a justification for the suggested modifications. The most significant revision in the joint industry proposal is to set aside the valuation standards contained in MMS's January 15, 1987, proposed rulemaking and substitute, instead, the concepts of "gross royalty value" and "net royalty value." Industry stated the basis for their proposal is the Internal Revenue Code's (IRC) concept of "gross income from property" as used for depletion allowance calculations (IRC 613). This "gross royalty value" would be increased by amounts for non-Federal royalties and reduced by processing allowances and amounts based on Federal Black Lung excise taxes, Abandoned Mine Land fees, and State and local taxes (such as severance taxes). The resulting figure would be the "net royalty value" upon which royalties would be paid. The "gross royalty value" would exclude outbound (long-distance) transportation costs incurred with f.o.b. destination sales. "Gross royalty value" would also exclude take-or-pay payments for royalty assessment.

The Department has received considerable comments on the joint industry proposal. A letter from Governor Schwinden of Montana, representing his views and those of the Governors of Colorado, New Mexico, and Wyoming, generally opposed the joint industry proposal and supported continued reliance on the proposed valuation procedures. Several Governors subsequently wrote individual letters to express personal opinions where their views differed from that of the consensus view. Governor Sullivan of Wyoming and Governor Romer of Colorado indicated they could support exclusion of royalty reimbursements from gross proceeds to address the "royalty on royalty" issue.

Governor Sinner of North Dakota urged the Department to continue the ongoing review of product valuation and expressed specific concerns regarding the production of lignite in his State.

Numerous comments were submitted by electric utility firms and from Governors of States that consume substantial quantities of western coal production. These commenters urged adoption of the joint industry proposal, stating that the joint industry proposal would reduce fuel costs, which in turn would reduce consumer electricity costs. Some commenters supported the valuation proposal by rationalizing that a reduced valuation basis would compensate for the increased ad valorem royalty rates now required under the MLA.

No Indian Tribe or allottee submitted written comments concerning the joint industry proposal. However, Mr. Donald R. Wharton, Assistant Attorney General for Natural Resources, The Navajo Nation, offered comments to the Subcommittee on Mineral Resources Development and Production during the Oversight Hearing on Proposed Coal Product Valuation Rules on November 16, 1987. Mr. Wharton opposed the joint industry proposal, stating: "Industry's deletion of the concept of 'gross proceeds' for royalty payment purposes is inconsistent with the concept underlying the present valuation regulations—that royalties from *ad valorem* leases be based on a percentage of gross proceeds. We urge MMS to retain the 'gross proceeds' methodology for valuation."

MMS Response: The Department expended considerable effort in reviewing the joint industry proposal. Representatives from MMS and from the Department met separately with representatives of the Internal Revenue Service (IRS) to discuss the operation of the "gross income from property" rules and the computation of the percentage depletion allowance. Also, analysts in the MMS reviewed the potential advantages and disadvantages of revenue problems that could arise if the joint industry proposal were adopted as the basis of coal royalty valuation. The MMS analysts solicited input from States and coordinated with principal industry representatives to arrive at a mutually agreed upon range of royalty revenue amounts that would, in the collective judgment of the States, MMS, and industry, most likely occur if the joint industry proposal were accepted.

Following this extensive review, MMS decided not to adopt the joint industry proposal. The following reasoning is provided to explain MMS's decision.

1. *The Joint Industry Proposal is not Readily Adaptable to Lease Accounting.*

The MMS is required to collect and account for royalties on a lease basis. Royalty rates may vary from lease to

lease; prices will vary from contract to contract; and contracts may dedicate specific reserves. The IRS determination is made on a taxpayer basis, which would be an aggregate, at least, of all leases and contracts for a single mine, and could conceivably encompass more than one mining operation. Thus, the industry proposal seems to be inconsistent with the basis on which MMS must collect and account for royalties. Making the proposal consistent with MMS needs would require that MMS develop an allocation procedure to convert depletable income to a lease basis. Such a procedure would likely be expensive and require the use of simplifying assumptions to the extent of being unacceptable.

2. *Joint Industry Proposal Has No Relation to Historical Federal Royalty Valuation Practices.*

The Joint Industry Proposal introduces a royalty valuation concept that has never been used in the valuation of any leasable mineral. The Joint Industry Proposal valuation concept is not consistent with the Department of the Interior's current valuation procedure for coal. Also, the Joint Industry Proposal is inconsistent with existing royalty valuation procedures for noncoal solid minerals; e.g., sodium and potassium, which have not been substantially revised since 1978.

3. *Joint Industry Proposal Has No Relation to Prior Statutory Interpretation.*

The Mineral Leasing Act of 1920 (Act), as amended specifically by the Federal Coal Leasing Amendments Act of 1976, requires that:

> A lease shall require payment of a royalty in such amount as the Secretary shall determine of not less than 12½ per centum of the value of coal as defined by regulation, except the Secretary may determine a lesser amount in the case of coal recovered by underground mining operations.

The Act and leases issued under the Act do not define value, gross value, gross proceeds, or value of production, or how to arrive at those values.

However, a long history of royalty valuation rulemaking for all leasable minerals shows a consistent adherence to common principles of valuation. The Joint Industry Proposal departs from previous administrative interpretations of legislation and in this regard strays from "original intent" that has been established by longstanding practice.

4. *The Joint Industry Proposal Creates New Auditing Problems.*

The Joint Industry Proposal would be a new and complex approach to coal royalty value determinations. It is significantly different from the existing valuation methodology used for coal and other minerals. As a result, MMS (as well as State and Indian) auditors would be required to relearn an entirely new system. This necessarily would delay many audits.

Proposed § 206.263 Contract submission.

Comment: Section 206.263(a), which requires sales contract submittal upon MMS request, received many industry comments and one Indian comment. All comments except the one Indian comment opposed the submittal requirement. The Indian commenter recommended "No changes" to the language of this section. Most industry commenters stated that MMS should have free access for review of contracts at the lessee's place of business. In objecting to the requirement of possible contract submittal, one industry commenter stated that "Coal supply agreements contain extremely proprietary information, which, if divulged to the public and/or competitors, can have a significantly negative impact upon both the coal buyer and the coal seller." Another industry commenter expressed the same concern, stating that if contracts are sent to MMS, it would "unnecessarily increase the risk of unwarranted disclosure of highly confidential, proprietary information * * *." Again, another industry commenter addressed similar fears of contract disclosure by MMS and recommended that the entire section be deleted from the regulations. One industry commenter stated that the "Royalty Management Advisory Committee recommended that contracts be reviewed on site." One industry commenter questioned the need for contract submittal, stating that "it is our understanding that MMS is developing its own financial audit team, through which all necessary contractual information could be obtained."

MMS Response: The MMS intends to review contracts during on-site audits. However, the MMS must retain the right to obtain sales contracts or other agreements from Federal or Indian lessees. The MMS will take all necessary precautions to safeguard contracts from unauthorized disclosure. The section has not been changed from the first proposal, except for some wording changes.

Comment: Section 206.263(b), which requires lessees to designate each submitted contract as arm's-length or non-arm's-length, received six comments. Industry commenters recommended deleting the phrase "submitted pursuant to this section" in order to be consistent with similar recommendations for paragraph (a). An Indian commenter stated that "Any contract submitted should be available to the [Indian] lessors also under paragraph (b)." The same Indian respondent maintained that "there should be some prior determination by MMS as to whether a contract is arm's-length or not instead of leaving the matter up to the lessee subject to audit to verify that the contract meets the criteria." One industry commenter recommended revising paragraph (b) to read: "Lessees and other payors shall designate each contract that is non-arm's-length." No rationale was supplied to support this recommendation.

MMS Response: When warranted, the MMS will make submitted contracts available to Indian lessors who certify that proprietary industry information in the contracts will be safeguarded. Regarding the issue of a lessee determining whether or not a contract is arm's-length, the MMS stresses that a lessee's determination of the arm's-length nature of a contract is not conclusive. Under paragraph (c), MMS may audit any contract to determine its character under the definition at § 206.251.

Proposed § 206.264 In-situ and surface gasification and liquefaction operations.

This section is changed only slightly from the first proposed rule.

Proposed § 206.265 Value enhancement of marketable coal.

The MMS is proposing to add a section which provides guidance to royalty valuation involving beneficiation beyond marketable condition by the lessee. This section would not be applicable in situations where a lessee sells its coal, in marketable condition, pursuant to an arm's-length contract and the purchaser performs the enhancement. In that circumstance, value would be determined by the lessee's gross proceeds pursuant to § 206.257(b).

This new section would provide generally that, if a lessee further processes coal (after placing it in marketable condition) to enhance its value prior to use, sale, or other disposition, royalties would be based on the value of the coal in marketable condition prior to enhancement.

The MMS received many industry comments that any valuation procedure for beneficiated coal must allow the lessee to recover the full costs of its activities. The focus of most concerns was that in the usual situation where MMS determines value based upon the sales price of the product less a

processing allowance, the typical MMS-allowed rate of return does not permit the lessee to fully recover its investment, hence the MMS benefits from the beneficiated coal without having made any investment. The MMS has revised its proposal to address this concern and would like further comment on this issue.

As stated above, this section would apply to situations where the value of the coal is enhanced beyond the point of marketable condition prior to use, sale, or other disposition by the lessee. The purpose of the proposal is to attempt to establish royalty value at the point when the coal has been placed in marketable condition but prior to its enhancement.

The first method to be applied would be to determine the value of the feedstock coal in marketable condition by application of the valuation benchmarks in § 206.257(c). Thus, MMS would consider the royalty value reported by the lessee and compare it to the values identified under the applicable benchmarks to determine the reasonableness of the value assigned by the lessee.

If the first four benchmarks cannot be applied, then MMS would use § 206.257(c)(v), or the net-back method. However, MMS would permit an allowance that is different than the normal net-back approach. This approach, to be seen as a last resort, determines royalty value after the marketable coal has been enhanced and is subsequently used, sold, or otherwise transferred. Under this net-back procedure, the MMS would begin with the gross proceeds accruing to the lessee from sales of the beneficiated coal. This amount would be reduced by MMS-approved processing costs. In recognition of the greater risk associated with coal beneficiation technologies and so as not to discourage their development, MMS is proposing to use a rate of return on investment (in doing the net-back procedure) that would be equal to two times the Standard and Poor's BBB bond rate applicable under § 206.259(b)(2)(v). The MMS specifically requests comments on the appropriateness of the proposed rate of return.

The MMS believes that using the approach described above for royalty purposes will accomplish MMS's goal of receiving the value of production in this circumstance, while assuring that the benefits associated with investments in beneficiation activities remain solely with the lessee. By first using the benchmarks to value feedstock coal in these situations, MMS ensures that market conditions are reflected in the royalty determination, thus minimizing the use of non-market approaches.

V. Public Comment Procedures

A. Written Comments

The public is invited to participate in this proceeding by submitting data, views, or arguments with respect to this notice. All comments should be submitted by 4:30 p.m. of the day specified in the "**DATES**" section to the appropriate address indicated in the "**ADDRESS**" section of this preamble and should be identified on the outside envelope and on documents submitted with the designation "Revision of Coal Royalty Valuation Regulations and Related Topics." All comments received by MMS will be available for public inspection in Room C420, Building 85, Denver Federal Center, Lakewood, Colorado, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

Any information or data submitted which is considered to be confidential must be so identified and submitted in writing, one copy only. The MMS reserves the right to determine the confidential status of the information or data and to treat it according to its independent determination.

B. Public Hearing

1. *Procedure for requests to make oral presentations:* The time and place for the hearing are indicated in the "**DATES**" and "**ADDRESSES**" sections of the preamble. If necessary to present all testimony, the hearing will resume at 9:30 a.m. on the next business day following the first day of the hearing.

You may make a written request for an opportunity to make an oral presentation. The request should contain a business telephone number and also a telephone number where you may be contacted during the day prior to the hearing. If you are selected to be heard at the hearing you will be notified. You will be required to submit 50 copies of your statement to MMS at the address indicated in the "**ADDRESS**" section of the preamble.

2. *Conduct of the hearing:* The MMS reserves the right to select the persons to be heard at the hearing (in the event there are more requests to be heard than time allows), to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based upon the number of persons requesting to be heard.

A Department of the Interior official will be designated to preside at the hearing. This will not be a judicial-type hearing. Questions may be asked only by those conducting the hearing. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

If you wish to ask a question at the hearing, you may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant, and whether time limitations permit it to be presented for answer at the hearing.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer at the opening of the hearing.

A transcript of the hearing will be made. The entire record of the hearing, including the transcript, will be retained by MMS and made available for inspection in Room C420, Building 85, Denver Federal Center, Lakewood, Colorado, between the hours 8:00 a.m. and 4:00 p.m., Monday through Friday. You may purchase a copy of the transcript from the reporter.

VI. Procedural Matters

Executive Order 12291

The Department of the Interior (DOI) has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. This rulemaking consolidates Federal and Indian coal royalty valuation regulations; clarifies DOI coal royalty valuation and coal transportation and coal washing allowance policy; and provides for consistent royalty valuation policy among all leasable minerals.

Regulatory Flexibility Act

Because this rule primarily consolidates and streamlines existing regulations into a single part for consistent application, there are no significant additional requirements or burdens placed upon small business entities as a result of implementation of this rule. Therefore, the DOI has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Paperwork Reduction Act of 1980

The information collection requirements contained in §§ 206.254, 206.257, 206.259, 206.262, and 206.263 of this rule have been approved by the Office of Management and Budget

(OMB) under 44 U.S.C. 3501 et seq. and assigned clearance numbers 1010–0040, –0063, –0064, and –0074.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that a detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects

30 CFR Part 202

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 203

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 212

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3480

Government contracts, Intergovernmental relations, Land Management Bureau, Mineral royalties, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

Date: June 28, 1988.

James E. Cason,

Acting Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR Parts 202, 203, 206, and 212 are proposed to be amended as follows:

TITLE 30—MINERAL RESOURCES

PART 202—ROYALTIES

1. The authority citation for Part 202 continues to read as follows:

Authority: 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Paragraph (b) of § 203.250 under Subpart F of Part 203 is redesignated as a new § 202.250 under Subpart F of Part 202.

3. 30 CFR Part 202 is amended by revising newly redesignated § 202.250 to read as follows:

§ 202.250 Overriding royalty interest.

The regulations governing overriding royalty interests, production payments, or similar interests created under Federal coal leases are in 43 CFR Group 3400.

PART 203—RELIEF OR REDUCTION IN ROYALTY RATE

1. The authority citation for Part 203 continues to read as follows:

Authority: 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Paragraphs (c), (d), (e), (f), (g), (h), (i), (j), and (k) of § 203.250 under Subpart F are removed.

3. Paragraph (b) of § 203.250 is redesignated as a new § 202.250 under Subpart F of Part 202.

4. In § 202.250, paragraph (a) designation is removed and the section heading is revised to read as follows:

§ 203.250 Advance royalty.

5. A new § 203.251 is added in Subpart F to read as follows:

§ 203.251 Reduction in royalty rate or rental.

An application for reduction in coal royalty rate or rental shall be filed and processed in accordance with 43 CFR Group 3400.

PART 206—PRODUCT VALUATION

30 CFR Part 206 is amended as follows:

1. The authority citation for Part 206 continues to read as follows:

Authority: 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. 30 CFR Part 206 is amended by revising § 206.10 of Subpart A to read as follows:

Subpart A—General Provisions

§ 206.10 Information collection.

The information collection requirements contained in 30 CFR Part 206 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* The forms and approved OMB clearance numbers are as follows:

Form No., name and filing date	OMB No.
MMS–4014—Report of sales and royalty remittance-solid minerals—due by end of month following sales or production month (unless lease terms specify a different frequency for royalty payments) and for rentals no later than the date specified in the lease terms	1010–0064
MMS–4030—Solid Minerals Payor Information form—due 30 days after issuance of a new lease or change to an existing account established by an earlier form	1010–0064
MMS–4050—Mine Information Report—due at the request of MMS during the initial conversion of the mine/lease to the Production Accounting and Auditing System (PAAS)	1010–0063
MMS–4051—Facility and Measurement Information Form and Supplement—due at the request of MMS during the initial conversion of the facility and measurement device operators to the PAAS	1010–0040
MMS–4059—Solid Minerals Operation Report—due by the 15th day of the second month following the production month	1010–0063
MMS–4060—Solid Minerals Facility Report—due by the 15th day of the second month following the production month	1010–0063
MMS–4109—Gas Processing Allowance Summary Report—due within 3 months following the last day of the month for which an allowance is claimed, unless a longer period is approved by MMS	1010–0075
MMS–4110—Oil Transportation Allowance Report—due within 3 months following the last day of the month for which an allowance is claimed, unless a longer period is approved by MMS	1010–0061
MMS–4292—Coal Washing Allowance Report/Application—due prior to, or at the same time that the allowance is first reported on Form MMS–4014, and annually thereafter if the allowance does not change	1010–0074
MMS–4293—Coal Transportation Allowance Report/Application—due prior to, or at the same time that the allowance is first reported on Form MMS–4014 and annually thereafter if the allowance does not change	1010–0074
MMS–4295—Gas Transportation Allowance Report—due within 3 months following the last day of the month for which an allowance is claimed unless a longer period is approved by MMS	1010–0075

The information is being collected by the Department of the Interior to meet its congressionally mandated accounting and audit responsibilities relating to Federal and Indian mineral royalty management. The information collected will be used to determine whether royalty payments represent the proper values and to determine the transportation and processing allowances that may be deducted from royalty payments due on Federal and Indian lands. The reports are mandatory and are required to receive a benefit. Information reporting forms are available from MMS. Requests should be addressed to: Minerals Management Service, Royalty Management Program, P.O. Box 17110, Denver, Colorado 80217.

3. 30 CFR Part 206 is amended by adding §§ 206.250, 206.251, 206.252, 206.253, 206.254, 206.255, 206.256, 206.257, 206.258, 206.259, 206.260, 206.261, 206.262, 206.263, 206.264, and 206.265 to Subpart F to read as follows:

Subpart F—Coal

Sec.

206.250 Purpose and scope.
206.251 Definitions.
206.252 Information collection.
206.253 Coal subject to royalties—general provisions.
206.254 Quality and quantity measurement standards for reporting and paying royalties.
206.255 Point of royalty determination.
206.256 Valuation standards for cents-per-ton leases.
206.257 Valuation standards for ad valorem leases.
206.258 Washing allowances—general.
206.259 Determination of washing allowances.
206.260 Allocation of washed coal.
206.261 Transportation allowances—general.
206.262 Determination of transportation allowances.
206.263 Contract submission.
206.264 In situ and surface gasification and liquefaction operations.
206.265 Value enhancement of marketable coal.

§ 206.250 Purpose and scope.

(a) This subpart prescribes the procedures to establish the value, for royalty purposes, of all coal from Federal and Indian Tribal and allotted leases (except leases on the Osage Indian Reservation).

(b) If the specific provisions of any statute, treaty, or settlement agreement between the United States (or Indian lessor) and a lessee resulting from administrative or judicial litigation, or any coal lease subject to the requirements of this subpart, are inconsistent with any regulation in this subpart, then the statute, treaty, lease provision, or settlement shall govern to the extent of that inconsistency.

(c) All royalty payments made to the Minerals Management Service (MMS) are subject to later audit and adjustment.

(d) The regulations in this subpart are intended to ensure that the trust responsibilities of the United States with respect to the administration of Indian coal leases are discharged in accordance with the requirements of the governing mineral leasing laws, treaties, and lease terms.

§ 206.251 Definitions.

"Ad valorem lease" means a lease where the royalty due to the lessor is based upon a percentage of the amount or value of the coal.

"Allowance" means an approved, or an MMS-initially accepted deduction in determining value for royalty purposes. "Coal washing allowance" means an allowance for the reasonable, actual costs incurred by the lessee for coal washing, or an approved or MMS-initially accepted deduction for the costs of washing coal, determined pursuant to this subpart. "Transportation allowance" means an allowance for the reasonable, actual costs incurred by the lessee for moving coal to a point of sale or point of delivery remote from both the lease and mine or wash plant, or an approved MMS-initially accepted deduction for costs of such transportation, determined pursuant to this subpart.

"Area" means a geographic region in which coal has similar quality and economic characteristics. Area boundaries are not officially designated and the areas are not necessarily named.

"Arm's-length contract" means a contract or agreement that has been arrived at in the marketplace between independent, nonaffiliated persons with opposing economic interests regarding that contract. For purposes of this subpart, two persons are affiliated if one person controls, is controlled by, or is under common control with another person. For purposes of this subpart, based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership:

(a) Ownership in excess of 50 percent constitutes control;

(b) Ownership of 10 through 50 percent creates a presumption of control; and

(c) Ownership of less than 10 percent creates a presumption of noncontrol which MMS may rebut if it demonstrates actual or legal control, including the existence of interlocking directorates.

Notwithstanding any other provisions of this subpart, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. The MMS may require the lessee to certify ownership control. To be considered arm's-length for any production month, a contract must meet the requirements of this definition for that production month as well as when the contract was executed.

"Audit" means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Federal or Indian leases.

"BIA" means the Bureau of Indian Affairs of the Department of the Interior.

"BLM" means the Bureau of Land Management of the Department of the Interior.

"Coal" means coal of all ranks from lignite through anthracite.

"Coal washing" means any treatment to remove impurities from coal. Coal washing may include, but is not limited to, operations such as flotation; air, water, or heavy media separation; drying; and related handling (or combinations thereof).

"Contract" means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

"Gross proceeds" (for royalty payment purposes) means the total monies and other consideration accruing to a coal lessee for the production and disposition of coal. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as crushing, sizing, screening, storing, mixing, loading, treatment with substances including chemicals or oil, and other preparation of the coal to the extent that the lessee is obligated to perform them at no cost to the Federal Government or Indian lessor. Gross proceeds, as applied to coal, also includes, but is not limited to: payments or credits for advanced prepaid reserve payments subject to recoupment through reduced prices in later sales; payments or credits for advanced exploration or development costs that are subject to recoupment through reduced prices in later sales; take-or-pay payments; and reimbursements, including but not limited to, reimbursements for royalties, taxes or fees. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Federal or Indian royalty interest may be exempt from taxation. Monies and other

consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

"Indian allottee" means any Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation.

"Indian Tribe" means any Indian Tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any land or interest in land is held in trust by the United States or which is subject to Federal restriction against alienation.

"Lease" means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States for a Federal or Indian coal resource under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of coal—or the land area covered by that authorization, whichever is required by the context.

"Lessee" means any person to whom the United States, an Indian Tribe, or an Indian allottee issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

"Like-quality coal" means coal that has similar chemical and physical characteristics.

"Marketable condition" means coal that is sufficiently free from impurities and otherwise in a condition that it will be accepted by a purchaser under a sales contract typical for that area.

"Mine" means an underground or surface excavation or series of excavations and the surface or underground support facilities that contribute directly or indirectly to mining, production, preparation, and handling of lease products.

"Net-back method" means a method for calculating market value of coal at the lease or mine. Under this method, costs of transportation, washing, handling, etc., are deducted from the ultimate proceeds received for the coal at the first point at which reasonable values for the coal may be determined by a sale pursuant to an arm's-length contract or by comparison to other sales of coal, to ascertain value at the mine.

"Net output" means the quantity of washed coal that a washing plant produces.

"Person" means any individual, firm, corporation, association, partnership, consortium, or joint venture.

"Selling arrangement" means the individual contractual arrangements under which sales or dispositions of coal are made to a purchaser.

"Spot market price" means the price received under any sales transaction when planned or actual deliveries span a short period of time, usually not exceeding one year.

§ 206.252 Information collection.

The information collection requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* The forms and approved OMB clearance numbers are identified in § 206.10 of this part.

§ 206.253 Coal subject to royalties—general provisions.

(a) All coal (except coal unavoidably lost as determined by BLM pursuant to 43 CFR Group 3400) from a Federal or Indian lease subject to this part is subject to royalty. This includes coal used, sold, or otherwise disposed of by the lessee on or off the lease.

(b) If a lessee receives compensation for unavoidably lost coal through insurance coverage or other arrangements, royalties at the rate specified in the lease are to be paid on the amount of compensation received for the coal. No royalty is due on insurance compensation received by the lessee for other losses.

(c) In the event waste piles or slurry ponds are reworked to recover coal, the lessee shall pay royalty at the rate specified in the lease at the time the recovered coal is used, sold, or otherwise finally disposed of. The royalty rate shall be that rate applicable to the production method used to initially mine coal in the waste pile or slurry pond; i.e., underground mining method or surface mining method. Coal in waste pits or slurry ponds initially mined from Federal or Indian leases shall be allocated to such leases regardless of whether it is stored on Federal or Indian lands. The lessee shall maintain accurate records to determine to which individual Federal or Indian lease coal in the waste pit or slurry pond should be allocated. However, nothing in this section requires payment of a royalty on coal for which a royalty has already been paid.

§ 206.254 Quality and quantity measurement standards for reporting and paying royalties.

(a) For leases subject to § 206.257, the quality of coal on which royalty is due shall be reported on the basis of percent sulfur, percent ash, and number of British thermal units (Btu) per pound of coal. Coal quality determinations shall be made at intervals prescribed in the lessee's sales contract. If there is no contract, or if the contract does not specify the intervals of coal quality determination, the lessee shall propose a quality test schedule to MMS. In no case, however, shall quality tests be performed less than quarterly using standard industry-recognized testing methods. Coal quality information shall be reported on the appropriate forms required under 30 CFR Part 216.

(b) For all leases subject to this subpart, the quantity of coal on which royalty is due shall be measured in short tons (of 2,000 pounds each) by methods prescribed by the BLM. Coal quantity information shall be reported on appropriate forms required under 30 CFR Part 216 and on the Report of Sales and Royalty Remittance, Form MMS–4014, as required under 30 CFR Part 210.

§ 206.255 Point of royalty determination.

(a) For all leases subject to this subpart, royalty shall be computed on the basis of the quantity and quality of Federal or Indian coal in marketable condition measured at the point of royalty measurement as determined jointly by BLM and MMS.

(b) Coal produced and added to stockpiles or inventory does not require payment of royalty until such coal is later used, sold, or otherwise finally disposed of. The MMS may ask BLM or BIA to increase the lease bond to protect the lessor's interest when BLM determines that stockpiles or inventory become excessive so as to increase the risk of degradation of the resource.

(c) The lessee shall pay royalty at a rate specified in the lease at the time the coal is used, sold, or otherwise finally disposed of, unless otherwise provided for at § 206.256(d) of this chapter.

§ 206.256 Valuation standards for cents-per-ton leases.

(a) This section is applicable to coal leases on Federal, Indian Tribal, and allotted Indian lands (except leases on the Osage Indian Reservation) which provide for the determination of royalty on a cents-per-ton (or other quantity) basis.

(b) The royalty for coal from leases subject to this section shall be based on the dollar rate per ton prescribed in the lease. That dollar rate shall be applicable to the actual quantity of coal used, sold, or otherwise finally disposed of, including coal which is avoidably lost as determined by BLM pursuant to 43 CFR Part 3400.

(c) For leases subject to this section, there shall be no allowances for transportation, removal of impurities, coal washing, or any other processing or preparation of the coal.

(d) When a coal lease is readjusted pursuant to 43 CFR Part 3400 and the royalty valuation method changes from a cents-per-ton basis to an ad valorem basis, coal which is produced prior to the effective date of readjustment and sold or used within 30 days of the effective date of readjustment shall be valued pursuant to this section. All coal that is not used, sold, or otherwise finally disposed of within 30 days after the effective date of readjustment shall be valued pursuant to the provisions of § 206.257 of this chapter, and royalties shall be paid at the royalty rate specified in the readjusted lease.

§ 206.257 Valuation standards for ad valorem leases.

(a) This section is applicable to coal leases on Federal, Indian Tribal, and allotted Indian lands (except leases on the Osage Indian Reservation) which provide for the determination of royalty as a percentage of the amount or value of coal (ad valorem). The value for royalty purposes of coal from such leases shall be the value of coal determined pursuant to this section, less applicable coal washing allowances and transportation allowances determined pursuant to §§ 206.258 through 206.262 of this chapter, or any allowance authorized by § 206.265 of this chapter. The royalty due shall be equal to the value for royalty purposes multiplied by the royalty rate in the lease.

(b)(1) The value of coal that is sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(2), (b)(3), (b)(5), and (b)(6) of this section. The lessee shall have the burden of demonstrating that its contract is arm's-length. The value which the lessee reports, for royalty purposes, is subject to monitoring, review, and audit.

(2) In conducting reviews and audits, MMS will examine whether the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the coal. If the contract does not reflect the total consideration, then the MMS may require that the coal sold pursuant to that contract be valued in accordance with paragraph (c) of this section. Value may not be less than the gross proceeds accruing to the lessee, including the additional consideration.

(3) If the MMS determines that the gross proceeds accruing to the lessee pursuant to an arm's-length contract do not reflect the reasonable value of the production because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the coal production be valued pursuant to paragraph (c)(2) (ii), (iii), (iv), or (v) of this section, and in accordance with the notification requirements of paragraph (d)(3) of this section. When MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's reported coal value.

(4) The MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the coal.

(5) Notwithstanding any other regulations in this subpart, except for Indian leases the value of coal shall be reduced by the amounts of Federal Black Lung excise taxes and abandoned mine lands fees authorized by the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*), applicable to the coal production.

(6) The value of production for royalty purposes shall not include payments received by the lessee pursuant to a contract which the lessee demonstrates, to MMS's satisfaction, were not part of the total consideration paid for the purchase of coal.

(c)(1) The value of coal from leases subject to this section and which is not sold pursuant to an arm's-length contract shall be determined in accordance with this section.

(2) If the value of the coal cannot be determined pursuant to paragraph (b) of this section, then the value shall be determined through application of other valuation criteria. The criteria shall be considered in the following order, and the value shall be based upon the first applicable criterion: (i) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition by other than an arm's-length contract), provided that those gross proceeds are equivalent to the gross proceeds derived from, or paid under, comparable arm's-length contracts for sales, purchases, or other dispositions of like-quality coal in the area. In evaluating the comparabilty of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: price, time of execution, duration, market or markets served, terms, quality of coal, quantity, and such other factors as may be appropriate to reflect the value of the coal; (ii) prices reported for that coal to a public utility commission; (iii) prices reported for that coal to the Energy Information Administration of the Department of Energy; (iv) other relevant matters including, but not limited to, published or publicly available spot market prices, or information submitted by the lessee concerning circumstances unique to a particular lease operation or the saleability of certain types of coal; (v) if a reasonable value cannot be determined using paragraphs (c)(2) (i), (ii), (iii), or (iv) of this section, then a net-back method or any other reasonable method shall be used to determine value.

(3) When the value of coal is determined pursuant to paragraph (c)(2) of this section, that value shall be subject to the adjustments provided in paragraphs (b)(5) and (b)(6), as appropriate.

(d)(1) Where the value is determined pursuant to paragraph (c) of this section, that value does not require MMS's prior approval. However, the lessee shall retain all data relevant to the determination of royalty value. Such data shall be subject to review and audit, and MMS will direct a lessee to use a different value if it determines that the reported value is inconsistent with the requirements of these regulations.

(2) Any Federal or Indian lessee will make available upon request to the authorized MMS, State, or Indian representatives, or to the Inspector General of the Department of the Interior or other persons authorized to receive such information, arm's-length sales and sales quantity data for like-quality coal sold, purchased, or otherwise obtained by the lessee from the area.

(3) A lessee shall notify MMS if it has determined value pursuant to paragraphs (c)(2) (ii), (iii), (iv), or (v) of this section. The notification shall be by letter to the Associate Director for Royalty Management or his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this section is a one-time notification due no later than the month the lessee first reports royalties on a Form MMS–4014 using a valuation method authorized by paragraphs (c)(2) (iv) or (v) of this section, and each time there is a change in a method under paragraphs (c)(2) (iv) or (v) of this section.

(e) If MMS determines that a lessee has not properly determined value, the lessee shall be liable for the difference.

if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also be liable for interest computed pursuant to 30 CFR 218.202. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(f) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS a value determination method, and may use that method in determining value for royalty purposes until MMS issues its decision. The lessee shall submit all available data relevant to its proposal. The MMS shall expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make the adjustments in accordance with paragaph (e) of this section.

(g) Notwithstanding any other provisions of this section, under no circumstances shall the value for royalty purposes be less than the gross proceeds accruing to the lessee, less applicable allowances determined pursuant to §§ 206.258 through 206.262, and § 206.265 of this chapter. If take-or-pay payments are a part of gross proceeds, no additional royalty shall be due if future make-up deliveries are taken, unless the purchaser is required to pay any additional amount because only a partial payment was previously made or as a result of price increases during the make-up period.

(h) The lessee is required to place coal in marketable condition at no cost to the Federal Government or Indian lessor. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds has been reduced because the purchaser, or any other person, is providing certain services, the cost of which ordinarily is the responsibility of the lessee to place the coal in marketable condition.

(i) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. Absent contract revision or amendment, if the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled, it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract, and may be retroactively applied to value for royalty purposes for a period not to exceed two years, unless MMS approves a longer period. If the lessee makes timely application for a price increase allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase are received. This paragraph applies to price increases only and shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or timely, for a quantity of coal.

(j) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by the MMS of value under this section shall be considered final or binding as against the Federal Government, its beneficiaries, the Indian Tribes, or allottees until the audit period is formally closed.

(k) Certain information submitted to MMS to support valuation proposals, including transportation, coal washing, or other allowances pursuant to § 206.265 of this chapter, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 522. Any data specified by the Act to be privileged, confidential, or otherwise exempt shall be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this Part are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR Part 2. Nothing in this section is intended to limit or diminish in any manner whatsoever the right of an Indian lessor to obtain any and all information as such lessor may be lawfully entitled from MMS or such lessor's lessee directly under the terms of the lease or applicable law.

§ 206.258 Washing allowances—general.

(a) For ad valorem leases subject to § 206.257 of this chapter, MMS shall, as authorized by this section, allow a deduction in determining value for royalty purposes for the reasonable, actual costs incurred to wash coal, unless the value determined pursuant to § 206.257 was based upon like-quality unwashed coal. Under no circumstances shall the washing allowance and the transportation allowance authorized by § 206.262 of this subpart reduce the value for royalty purposes to zero.

(b) If MMS determines that a lessee has improperly determined a washing allowance authorized by this section, then the lessee shall be liable for any additional royalties, plus interest determined in accordance with 30 CFR 218.202, or shall be entitled to a credit without interest.

(c) Lessees shall not disproportionately allocate washing costs to Federal or Indian leases.

(d) No cost normally associated with mining operations and which are necessary for placing coal in marketable condition shall be allowed as a cost of washing.

(e) Coal washing costs shall only be recognized as allowances when the washed coal is sold and royalties are reported and paid.

§ 206.259 Determination of washing allowances.

(a) *Arm's-length contracts.* (1) For washing costs incurred by a lessee pursuant to an arm's-length contract, the washing allowance shall be the reasonable actual costs incurred by the lessee for washing the coal under that contract, subject to monitoring, review, audit, and possible future adjustment. The MMS's prior approval is not required before a lessee may deduct costs incurred under an arm's-length contract. However, before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4292, Coal Washing Allowance Report, in accordance with paragraph (c)(1) of this section. A washing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4292 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

(2) In conducting reviews and audits, MMS will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the washer for the washing. If the contract reflects more than the total consideration paid, then the MMS may require that the washing allowance be determined in accordance with paragraph (b) of this section.

(3) If the MMS determines that the consideration paid pursuant to an arm's-length washing contract does not reflect the reasonable value of the washing because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the washing allowance be determined in accordance with paragraph (b) of this section. When MMS determines that the

value of the washing may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's washing costs.

(4) Where the lessee's payments for washing under an arm's-length contract are not based on a dollar-per-unit basis, the lessee shall convert whatever consideration is paid to a dollar value equivalent. Washing allowances shall be expressed as a cost per ton of coal washed.

(b) *Non-arm's-length or no contract.* (1) If a lessee has a non-arm's-length contract or has no contract, including those situations where the lessee performs washing for itself, the washing allowance will be based upon the lessee's reasonable actual costs. All washing allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and possible future adjustment. Prior MMS approval of washing allowances is not required for non-arm's-length or no contract situations. However, before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4292 in accordance with paragraph (c)(2) of this section. A washing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4292 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. The MMS will monitor the allowance deduction to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual washing allowance.

(2) The washing allowance for non-arm's-length or no contract situation shall be based upon the lessee's actual costs for washing during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the initial depreciable investment in the wash plant multiplied by the rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the wash plant.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes, rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the wash plant; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead attributable and allocable to the operation and maintenance of the wash plant is an allowable expense. State and Federal income taxes and severance taxes, including royalties, are not allowable expenses.

(iv) A lessee may use either paragraph (b)(2)(iv) (A) or (B) of this section. After a lessee has elected to use either method for a wash plant, the lessee may not later elect to change to the other alternative without approval of the MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves, whichever is appropriate, which the wash plant services, or a unit of production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a wash plant shall not alter the depreciation schedule established by the original operator/lessee for purposes of the allowance calculation. With or without a change in ownership, a wash plant shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) The MMS shall allow as a cost an amount equal to the allowable initial capital investment in the wash plant multiplied by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to plants first placed in service or acquired after [*insert the effective date of these regulations*].

(v) The rate of return shall be the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be the monthly average rate as published in *Standard and Poor's Bond Guide* for the first month of the reporting period for which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent washing allowance reporting period (which is determined pursuant to paragraph (c)(2) of this section).

(3) The washing allowance for coal shall be determined based on the lessee's reasonable and actual cost of washing the coal. The lessee may not take an allowance for the costs of washing lease production that is not royalty bearing.

(c) *Reporting requirements.* (1) Arm's-length contracts.

(i) With the exception of those washing allowances specified in paragraphs (c)(1) (v) and (vi) of this section, the lessee shall submit page one of the initial Form MMS–4292 prior to, or at the same time as, the washing allowance determined pursuant to an arm's-length contract is reported on Form MMS–4014, Report of Sales and Royalty Remittance. A Form MMS–4292 receive by the end of the month that the Form MMS–4014 is due shall be considered to be received timely.

(ii) The initial Form MMS–4292 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a washing allowance and shall continue until the end of the calendar year, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier.

(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4292 within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) The MMS may require that a lessee submit arm's-length washing contracts and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

(v) Washing allowances which are based on arm's-length contracts and which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) The MMS may establish, in appropriate circumstances, reporting requirements that are different from the requirements of this section.

(2) Non-arm's-length or no contract.

(i) With the exception of those washing allowances specified in paragraphs (c)(2) (v) and (vii) of this section, the lessee shall submit an initial Form MMS–4292 prior to, or at the same time as, the washing allowance determined pursuant to a non-arm's-

length contract or no contract situation is reported on Form MMS–4014, Report of Sales and Royalty Remittance. A Form MMS–4292 received by the end of the month that the Form MMS–4014 is due shall be considered to be timely received. The initial reporting may be based on estimated costs.

(ii) The initial Form MMS–4292 shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a washing allowance and shall continue until the end of the calendar year, or until the washing under the non-arm's-length contract or the no contract situation terminates, whichever is earlier.

(iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4292 containing the actual costs for the previous reporting period. If coal washing is continuing, the lessee shall include on Form MMS–4292 its estimated costs for the next calendar year. The estimated coal washing allowance shall be based on the actual costs for the previous period plus or minus any adjustments which are based on the lessee's knowledge of decreases or increases which will affect the allowance. Form MMS–4292 must be received by MMS within 3 months after the end of the previous reporting period, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) For new wash plants, the lessee's initial Form MMS–4292 shall include estimates of the allowable coal washing costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the plant, or if such data are not available, the lessee shall use estimates based upon industry data for similar coal wash plants.

(v) Washing allowances based on non-arm's-length or no-contract situations which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) Upon request by MMS, the lessee shall submit all data used by the lessee to prepare its Form MMS–4292. The data shall be provided within a reasonable period of time, as determined by MMS.

(vii) The MMS may establish, in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(3) The MMS may establish coal washing allowance reporting dates for individual leases different from those specified in this subpart in order to provide more effective administration. Lessees will be notified of any change in their reporting period.

(4) Washing allowances must be reported as a separate line on the Form MMS–4014, unless MMS approves a different reporting procedure.

(d) *Interest assessments for incorrect or late reports and failure to report.* (1) If a lessee deducts a washing allowance on its Form MMS–4014 without complying with the requirements of this section, the lessee shall pay interest only on the amount of such deduction until the requirements of this section are complied with. The lessee also shall repay the amount of any allowance which is disallowed by this section.

(2) If a lessee erroneously reports a washing allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.202.

(e) *Adjustments.* (1) If the actual coal washing allowance is less than the amount the lessee has estimated and taken during the reporting period, the lessee shall be required to pay additional royalties due plus interest computed pursuant to 30 CFR 218.202, retroactive to the first month the lessee is authorized to deduct a washing allowance. If the actual washing allowance is greater than the amount the lessee has estimated and taken during the reporting period, the lessee shall be entitled to a credit without interest.

(2) The lessee must submit a corrected Form MMS–4014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.

(f) *Other washing cost determinations.* The provisions of this section shall apply to determine washing costs when establishing value using a net-back valuation procedure or any other procedure that requires deduction of washing costs.

§ 206.260 Allocation of washed coal.

(a) When coal is subjected to washing, the washed coal must be allocated to the leases from which it was extracted.

(b) When the net output of coal from a washing plant is derived from coal obtained from only one lease, the quantity of washed coal allocable to the lease will be based on the net output of the washing plant.

(c) When the net output of coal from a washing plant is derived from coal obtained from more than one lease, the quantity of net output of washed coal allocable to each lease will be based on the ratio of measured quantities of coal delivered to the washing plant and washed from each lease compared to the total measured quantities of coal delivered to the washing plant and washed.

§ 206.261 Transportation allowances—general.

(a) For ad valorem leases subject to § 206.257 of this chapter, where the value for royalty purposes has been determined at a point remote from the lease or mine, MMS shall, as authorized by this section, allow a deduction in determining value for royalty purposes for the reasonable, actual costs incurred to:

(1) Transport the coal from a Federal or Indian lease to a sales point which is remote from both the lease and mine; or

(2) Transport the coal from a Federal or Indian lease to a wash plant when that plant is remote from both the lease and mine and, if applicable, from the wash plant to a remote sales point.

In-mine transportation costs shall not be included in the transportation allowance.

(b) Under no circumstances shall the washing allowance and the transportation allowance authorized by § 206.259 of this subpart reduce the value of coal under any selling arrangement to zero.

(c) (1) When coal transported from a mine to a wash plant is eligible for a transportation allowance in accordance with this section, the lessee is not required to allocate transportation costs between the quantity of clean coal output and the rejected waste material. The transportation allowance shall be authorized for the total production which is transported. Transportation allowances shall be expressed as a cost per ton of cleaned coal transported.

(2) For coal that is not washed at a wash plant, the transportation allowance shall be authorized for the total production which is transported. Transportation allowances shall be expressed as a cost per ton of coal transported.

(3) Transportation costs shall only be recognized as allowances when the so transported coal is sold and royalties are reported and paid.

(d) If, after a review and/or audit, MMS determines that a lessee has improperly determined a transportation allowance authorized by this section, then the lessee shall pay any additional

royalties, plus interest, determined in accordance with 30 CFR 218.200, or shall be entitled to a credit, without interest.

(e) Lessees shall not disproportionately allocate transportation costs to Federal or Indian leases.

§ 206.262 Determination of transportation allowances.

(a) Arm's-length contracts.

(1) For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting the coal under that contract, subject to monitoring, review, audit, and possible future adjustment. The MMS's prior approval is not required before a lessee may deduct costs incurred under an arm's-length contract. However, before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4293, Coal Transportation Allowance Report, in accordance with paragraph (c) (1) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4293 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

(2) In conducting reviews and audits, MMS will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the transporter for the transportation. If the contract reflects more than the total consideration paid, then the MMS may require that the transportation allowance be determined in accordance with paragraph (b) of this section.

(3) If the MMS determines that the consideration paid pursuant to an arm's-length transportation contract does not reflect the reasonable value of the transportation because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the transportation allowance be determined in accordance with paragraph (b) of this section. When MMS determines that the value of the transportation may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's transportation costs.

(4) Where the lessee's payments for transportation under an arm's-length contract are not based on a dollar-per-unit basis, the lessee shall convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(b) *Non-arm's-length or no contract.*

(1) If a lessee has a non-arm's-length contract or has no contract, including those situations where the lessee performs transportation services for itself, the transportation allowance will be based upon the lessee's reasonable actual costs. All transportation allowances deducted under a non-arm's-length or no-contract situation are subject to monitoring, review, audit, and possible future adjustment. Prior MMS approval of transportation allowances is not required for non-arm's-length or no-contract situations. However, before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4293 in accordance with paragraph (c)(2) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4293 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. The MMS will monitor the allowance deductions to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual transportation allowance deduction.

(2) The transportation allowance for non-arm's-length or no-contract situations shall be based upon the lessee's actual costs for transportation during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the initial depreciable investment in the transportation system multiplied by the rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the transportation system.

(i) Allowable operating expenses include: operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: maintenance of the transportation system; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) A lessee may use either paragraph (b)(2)(iv)(A) or (B) of this section. After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of the MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves, whichever, is appropriate, which the transportation system services, or a unit of production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a transportation system shall not alter the depreciation schedule established by the original transporter/lessee for purposes of the allowance calculation. With or without a change in ownership, a transportation system shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) The MMS shall allow as a cost an amount equal to the allowable initial capital investment in the transportation system multiplied by the rate of return determined pursuant to paragraph (b)(2)(B)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to transportation facilities first placed in service or acquired after [*insert the effective date of these regulations*].

(v) The rate of return shall be the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be the monthly average as published in *Standard and Poor's Bond Guide* for the first month of the reporting period for which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent transportation allowance reporting period (which is determined pursuant to paragraph (c)(2) of this section).

(3) A lessee may apply to the MMS for an exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) and (b)(2) of this section. The MMS will grant the exception only if the lessee has a rate for the transportation aproved by a

Federal agency (for both Federal and Indian leases) or by a State regulatory agency (for Federal leases). The MMS shall deny the exception request if it determines that the rate is excessive as compared to arm's-length transportation charges by systems, owned by the lessee or others, providing similar transportation services in that area. If there are no arm's-length transportation charges, MMS shall deny the exception request if: (i) no Federal or State regulatory agency cost analysis exists and the Federal or State regulatory agency, as applicable, has declined to investigate pursuant to MMS timely objections upon filing; and (ii) the rate significantly exceeds the lessee's actual costs for transportation as determined under this section.

(c) *Reporting requirements.* (1) Arm's-length contracts.

(i) With the exception of those transportation allowances specified in paragraphs (c)(1) (v) and (vi) of this section, the lessee shall submit page one of the initial Form MMS–4293 prior to, or at the same time as, the transportation allowance determined pursuant to an arm's-length contract is reported on Form MMS–4014, Reports of Sales and Royalty Remittance.

(ii) The initial Form MMS–4293 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier.

(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4293 within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period). Lessees may request special reporting procedures in unique allowance reporting situations, such as those related to spot sales.

(iv) The MMS may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

(v) Transportation allowances that are based on arm's-length contracts and which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) The MMS may establish, in appropriate circumstances, reporting requirements that are different from the requirements of this section.

(2) Non-arm's-length or no contract.

(i) With the exception of those transportation allowances specified in paragraphs (c)(2) (v) and (vii) of this section, the lessee shall submit an initial Form MMS–4293 prior to, or at the same time as, the transportation allowance determined pursuant to a non-arm's-length contract or no-contract situation is reported on Form MMS–4014, Report of Sales and Royalty Remittance. The initial report may be based on estimated costs.

(ii) The initial Form MMS–4293 shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until the transportation under the non-arm's-length contract or the no-contract situation terminates, whichever is earlier.

(iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4293 containing the actual costs for the previous reporting period. If the transportation is continuing, the lessee shall include on Form MMS–4293 its estimated costs for the next calendar year. The estimated transportation allowance shall be based on the actual costs for the previous reporting period plus or minus any adjustments that are based on the lessee's knowledge of decreases or increases that will affect the allowance. Form MMS–4293 must be received by MMS within 3 months after the end of the previous reporting period, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) For new transportation facilities or arrangements, the lessee's initial Form MMS–4293 shall include estimates of the allowable transportation costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the transportation system, or, if such data are not available, the lessee shall use estimates based upon industry data for similar transportation systems.

(v) Non-arm's-length-contract or no-contract-based transportation allowances that are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS–4293. The data shall be provided within a reasonable period of time, as determined by MMS.

(vii) The MMS may establish, in appropriate circumstances, reporting requirements that are different from the requirements of this section.

(viii) If the lessee is authorized to use its Federal- or State-agency-approved rate as its transportation cost in accordance with paragraph (b)(3) of this section, it shall follow the reporting requirements of paragraph (c)(1) of this section.

(3) The MMS may establish reporting dates for individual lessees different than those specified in this paragraph in order to provide more effective administration. Lessees will be notified as to any change in their reporting period.

(4) Transportation allowances must be reported as a separate line item on Form MMS–4014, unless MMS approves a different reporting procedure.

(d) *Interest assessments for incorrect or late reports and failure to report.* (1) If a lessee deducts a transportation allowance on its Form MMS–4014 without complying with the requirements of this section, the lessee shall be liable for interest on the amount of such deduction until the requirements of this section are complied with. Penalties may also be assessed, if appropriate.

(2) If a lessee erroneously reports a transportation allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.202.

(e) *Adjustments.* (1) If the actual transportation allowance is less than the amount the lessee has estimated and taken during the reporting period, the lessee shall be required to pay additional royalties due plus interest, computed pursuant to 30 CFR 218.202, retroactive to the first month the lessee is authorized to deduct a transportation allowance. If the actual transportation allowance is greater than the amount the lessee has estimated and taken during the reporting period, the lessee shall be entitled to a credit without interest.

(2) The lessee must submit a corrected Form MMS–4014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.

(f) *Other transportation cost determinations.* The provisions of this section shall apply to determine transportation costs when establishing value using a net-back valuation procedure or any other procedure that requires deduction of transportation costs.

§ 206.263 Contract submission.

(a) The lessee and other payors shall submit to MMS, upon request, contracts for the sale of coal from ad valorem leases subject to this subpart. The MMS must receive the contracts within a reasonable period of time, as specified by MMS. Lessees shall include as part of the submittal requirements any contracts, agreements, contract amendments, or other documents that affect the gross proceeds received for the sale of coal, as well as any other information regarding any consideration received for the sale or disposition of coal that is not included in such contracts. At the time of its contract submittals, MMS may require the lessee to certify in writing that it has provided all documents and information that reflect the total consideration provided by purchasers of coal from ad valorem leases subject to this subpart. Information requested under this section may include contracts for both ad valorem and cents-per-ton leases and shall be available in the lessee's offices during normal business hours or provided to MMS at such time and in such manner as may be requested by authorized Department of the Interior personnel. Any oral sales arrangement negotiated by the lessee must be placed in a written form and be retained by the lessee. Nothing in this section shall be construed to limit the authority of MMS to obtain or have access to information poursuant to 30 CFR Part 212.

(b) Lessees and other payors shall designate, for each contract submitted pursuant to this section, whether the contract is arm's-length or non-arm's-length.

(c) A lessee's or other payor's determination that its contract is arm's-length is subject to future audit to verify that the contract meets the criteria of the arm's-length contract definition in § 206.251.

(d) Information required to be submitted under this section that constitutes trade secrets and commercial and financial information that is identified as privileged or confidential shall not be available for public inspection or made public or disclosed without the consent of the lessee or other payor, except as otherwise provided by law or regulation.

§ 206.264 In-situ and surface gasification and liquefaction operations.

If an ad valorem Federal coal lease is developed by in-situ or surface gasification or liquefaction technology, the lessee shall propose the value of coal for royalty purposes to MMS. The MMS will review the lessee's proposal and issue a value determination. The lessee may use its proposed value until MMS issues a value determination.

§ 206.265 Value enhancement of marketable coal.

If the lessee enhances the value of coal after the coal has been placed in marketable condition in accordance with § 206.257(h) of this chapter, prior to use, sale, or other disposition the lessee shall notify MMS that such processing is occurring or will occur. The value of that production shall be determined as follows:

(a) A value established for the feedstock coal in marketable condition by application of the provisions of § 206.257(c)(2)(i)–(iv); or,

(b) In the event that a value cannot be established in accordance with paragraph (a) of this section, then the value of production will be determined in accordance with § 206.257(c)(2)(v) and the value shall be the lessee's gross proceeds accruing from the disposition of the enhanced product, reduced by MMS-approved processing costs and procedures (including a rate of return on investment equal to two times the Standard and Poor's BBB bond rate applicable under § 206.259(b)(2)(v)).

PART 212—RECORDS AND FILES MAINTENANCE

1. The authority citation for Part 212 is revised to read as follows:

Authority: 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. The title of Subparts C, D, F, and G under Part 212 are revised to read as follows:

Subpart C—Federal and Indian Oil—[Reserved]

Subpart D—Federal and Indian Gas—[Reserved]

Subpart F—Coal—[Reserved]

Subpart G—Other Solid Minerals—[Reserved]

3. The following subparts are added to Part 212:

Subpart H—Geothermal Resources—[Reserved]

Subpart I—OCS Sulfur [Reserved]

4. Paragraph (b) introductory text of § 212.200 is revised to read as follows:

§ 212.200 Maintenance of and access to records.

* * * * *

(b) The MMS shall have access to all records of the operator/lessee pertaining to compliance to Federal royalties, including, but not limited to:

* * * * *

TITLE 43—PUBLIC LANDS: INTERIOR

GROUP 3400—COAL MANAGEMENT

PART 3480—COAL EXPLORATION AND MINING OPERATIONS RULES

1. The authority citation for Part 3480 continues to read as follows:

Authority: The Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181, et seq.); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201, et seq.); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470, et seq.); the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.); the Act of March 3, 1909, as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 396a–396g); the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. 441 (43 U.S.C. 1457); the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471, et seq.); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321, et seq.); and the Freedom of Information Act (5 U.S.C. 552).

2. Section 3485.2 of 43 CFR Part 3480 is amended by removing paragraphs (d), (e), (f), (g), (h), (i), and (k). Paragraph (j) of § 3485.2(j) is redesignated as paragraph (d) of § 3485.2.

[FR Doc. 88–15834 Filed 7–14–88; 8:45 am]

BILLING CODE 4310-MR-M

federal register

Friday
July 15, 1988

Part IV

Environmental Protection Agency

40 CFR Part 131

Water Quality Standards for the Colville Indian Reservation in the State of Washington; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[WH-FRL-3317-5]

Water Quality Standards for the Colville Indian Reservation in the State of Washington

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This proposal would establish Federal water quality standards on the Colville Confederated Tribes Reservation located within the State of Washington. This action, which is being taken at the request of the Tribes, would establish designated uses and criteria for all surface waters on the Reservation.

DATES: Comments must be received by September 13, 1988.

A public hearing will be held on August 18, 1988, beginning at 7:00 p.m.

ADDRESSES: Comments on this proposed rule should be addressed to: Fletcher Shives; EPA, Region X (M/S 433); 1200 Sixth Avenue; Seattle, WA 98101 (206) 442-8293. The public may inspect the administrative record for this rulemaking and all comments received on this proposed rule at: EPA, Region X; 1200 Sixth Avenue; Seattle, WA 98101, between the hours of 8:00 am and 4:00 pm on business days. A reasonable fee will be charged for copying. Inquiries can be made over the phone by calling (202) 475-7315 or (206) 442-8293. Portions of the record, including the correspondence and other actions cited in this proposal and written public comments will be available from the Criteria and Standards Division, OWRS; 401 M Street SW.; Room 919 East Tower; Washington, DC 20460, during usual business hours.

The public hearing will be held at the Nespelem Community Center, Nespelem, Washington.

FOR FURTHER INFORMATION CONTACT: Fletcher Shives, (206) 442-8293.

SUPPLEMENTARY INFORMATION:

A. Background

On February 7, 1986, the Environmental Protection Agency received a request from the Colville Confederated Tribes to promulgate the Tribes' recently adopted water quality standards as Federal standards for waters on the lands of the Reservation. The Colville Confederated Tribes are a federally recognized Indian Tribe operating pursuant to a Constitution and Bylaws approved by the Commissioner of Indian Affairs on April 19, 1938. EPA reviewed the Tribes' adopted standards. EPA today is proposing to adopt most of the Tribes' use designations and conventional water quality criteria for its waters. The Colville Confederated Tribes and the State of Washington have an agreement to maintain consistent standards on boundary and other common bodies of water. The State of Washington has formally proposed to adopt criteria for certain toxic and nonconventional pollutants for which EPA has recommended criteria (WSR 87-13-069, published July 1, 1987). These criteria are contained in guidance published, under section 304(a) of the Clean Water Act, in the **Federal Register** from time to time and summarized in *Quality Criteria for Water (1986)* as updated. The State may take final action on its changes during the pendency of this rulemaking. EPA will consider the State's action and may subsequently propose equivalent criteria for Reservation-State boundary waters, if need dictates.

Amendments to the Clean Water Act which specifically address water quality standards on Indian lands have been enacted by Congress and require EPA to promulgate regulations within 18 months of enactment for treating Indian Tribes as States (section 506, Pub. L. 100-4; section 518 of the Clean Water Act). The amendments authorize the Administrator to "treat an Indian tribe as a State for purposes of Title II and sections 104, 106, 303, 305, 308, 309, 314, 319, 401, 402, and 404 of this Act to the degree necessary to carry out the objectives" of the amendments when certain conditions have been met. Section 518(e). Because the regulations "specify[ing] how Indian tribes shall be treated as States" for purposes of the Act have not yet been promulgated, EPA is proposing to establish Federal water quality standards for the Colville Confederated Tribes Indian Reservation.

As noted above, EPA initiated this action before the 1987 amendments to the Clean Water Act were enacted. Under the 1987 amendments, EPA intends to assist other Tribes to establish their own water quality standards for EPA review and approval as provided by section 518 of the CWA.

B. Statement of Basis and Purpose

1. Legal Authority

Under section 303 of the Clean Water Act, States are given the first opportunity to set standards. However, if the Administrator disapproves a State adopted water quality standard, the Act directs the Administrator to promulgate the necessary standards. The Administrator must also promulgate standards whenever he determines a revised or new standard is "necessary to meet the requirements of the Act." The Clean Water Act does not authorize States to implement or enforce their water quality management programs on Indian lands. Therefore, in the absence of a treaty or Federal statute granting such State authority over a particular tribal land, it is appropriate for EPA to proceed under section 303(c)(4)(B) to promulgate Federal water quality standards, where justified, for waters on Indian lands—in this case, for waters on the lands of the Colville Confederated Tribes.

Today's proposal is based on water quality standards developed by the Colville Confederated Tribes for application to waters on their Reservation. It is not, nor is it intended to be applicable to other lands, or used as a model for other Reservations. EPA's deference to the Colville Confederated Tribes on today's proposal is consistent with EPA's Indian Policy Statement of November 8, 1984, implementing the President's Indian Policy Statement of January 24, 1983, in which EPA committed to achieving a government-to-government relationship between the Agency and Indian tribes. (See also EPA Office of Federal Activities, *Administration of Environmental Programs on Indian Lands* (1983).) In keeping with the principle of Indian self-government, the EPA policy provides that Tribal governments are the primary parties for setting standards, making environmental policy decisions and managing programs for reservations. Moreover, Federal courts have approved EPA's decision to grant Indian Tribes the same degree of autonomy to determine the quality of their environment as was granted to the States. *See Nance v. EPA*, 645 F.2d 701 (9th Cir. 1981). *See* also, *State of Washington Dept. of Ecology v. EPA*, 752 F.2d 1465 (9th Cir. 1985), and *Phillips Petroleum Company v. EPA*, 803 F.2d 545 (10th Cir. 1986).

On August 28, 1985, EPA approved the Colville Water Quality Management Program under the Act and acknowledged that the Colville Confederated Tribes possess adequate authority and capability to enforce effective water quality management on the Reservation. EPA also determined that the Tribal activities would lead to on-reservation attainment of the water quality goals envisioned by Congress in enacting the Clean Water Act. See letter of Ernesta B. Barnes, EPA Regional Administrator, Region 10, to Governor Booth Gardner, re: Approval of the

Colville Water Quality Management Program (August 28, 1985). The Tribes have subsequently adopted water quality standards applicable to the waters of the Reservation.

Today, EPA is proposing Federal water quality standards applicable to the waters of the Colville Confederated Tribes Reservation that are essentially the same as the current tribal water quality standards. Thus, EPA will maintain Federal authority, but will work cooperatively with the Tribes in implementing the Clean Water Act and the Colville Water Quality Management Program on the Colville Confederated Tribes Indian Reservation.

2. Contents of the Proposed Rule

The proposed rule will become part of EPA's water quality standards regulation as § 131.35. Paragraphs (a) and (b) on "Background" and "Territory Covered" are self-explanatory.

Paragraph 131.35(c)(1), "Applicability, Administration and Amendment", specifies that these standards will be the basis of any NPDES permit limitations established based on water quality requirements. Water quality-based permits are those which have one or more parameters with more stringent limitations than required for a technology-based permit. As discussed above, EPA will be issuing regulations regarding when Indian tribes may be treated as States under the Clean Water Act. If the Colville Confederated Tribes qualify for treatment as a State for purposes of section 303, these Federally-issued water quality standards would remain in effect only until such time as EPA approves water quality standards adopted by the Colville Confederated Tribes and withdraws these regulations.

Paragraph 131.35(c)(2) authorizes the Regional Administrator, in consultation with the Tribal government, to develop general policies applicable to water quality standards. Public participation in establishing such policies would be provided in conjunction with the NPDES permit issuance process. Mixing zones must be justified by a discharger by an analysis similar to that presented in EPA's Technical Support Document for Water Quality Based Toxics Control (EPA, Office of Water; September 1985) or other technically sound method.

Paragraphs 131.35(c)(3) and (c)(4) establish amendment procedures. Paragraph (c)(5) simply reiterates that the existing regulation applies to the Reservation and identifies sections of special importance for compliance.

Paragraph 131.35(c)(6) provides that numeric criteria apply at instream flows equal to or greater than the lowest average 7-consecutive day low flow with a recurrence frequency of once in ten years. Qualitative criteria apply at all times regardless of flow.

Paragraph 131.35(d) includes the definitions which are applicable to this rulemaking. These definitions are intended to apply only to § 131.35.

Paragraph 131.35(e), "General Considerations", establishes requirements and interpretations for all waters on the Reservation. Paragraph 131.35(e)(1) establishes that at boundaries between waters of different classifications, the more stringent use and criteria apply.

Paragraph 131.35(e)(2), "Antidegradation", is a restatement of 40 CFR 131.12 with changes authorizing the Regional Administrator to administer the policy on the Reservation.

Paragraph 131.35(e)(3), "Aesthetic Qualities", establishes minimum, qualitative criteria which are applicable to all waters under all circumstances and flows.

EPA is not proposing numeric criteria for toxic pollutants for the protection of aquatic life or for the protection of human health for the Tribes' waters at this time. EPA is preparing proposed regulatory changes to the Water Quality Standards regulation to address the new requirements of the Clean Water Act Amendments of 1987 related to toxic pollutants. Until these regulatory changes are finalized it is the Agency's judgment that adopting numeric criteria for toxic pollutants in waters on the Colville Confederated Tribes Reservation is premature. The Agency has reviewed the current discharges with NPDES permits on the Reservation and did not discover any discharges causing a human health or aquatic life risk due to toxics discharges based on available Agency criteria guidance.

Paragraph 131.35(e)(4), requires that EPA's approved analytical methods be used for all testing done to demonstrate compliance with these standards.

Paragraph 131.35(f) defines water use classifications and specifies the criteria to protect each use classification. The Tribes' uses and criteria generally were used as the basis for today's proposal. However, with the concurrence of the Tribes, one change in criteria was to substitute EPA's section 304(a) recommended bacteriological indicator for the Tribes' criteria in swimmable waters. EPA is proposing enterococci (rather than fecal coliform) as a bacteriological indicator because it is a more reliable indicator. EPA's proposed bacteriological criterion is designed to provide approximately the same level of protection as a tribal one.

The dissolved oxygen criteria for Class I and II waters are the same as those adopted by the Tribes and the State of Washington for boundary waters between the Reservation and the State. These criteria are more stringent than EPA recommends under section 304(a).

EPA is proposing to adopt dissolved oxygen and bacteriological criteria similar in stringency to those adopted by the Tribes for the following reasons. First, EPA has determined that Federal promulgation of these criteria is consistent with the intent of the framers of the Clean Water Act and Federal policy regarding Indian tribes. (See section B.1. of this preamble.) Second, the Agency determined that the tribal program would be compatible with State water quality standards for surface waters adjacent to the Reservation; 40 CFR 131.10(b) provides that upstream standards shall provide for the attainment and maintenance of the water quality standards of downstream waters. Third, the more stringent criteria were adopted by the Tribes in consultation with the State of Washington and were designed to provide consistent levels of protection on waters passing between the State and Tribal boundaries; it was not designed to force the State to impose more stringent regulatory measures than otherwise required under the Act.

Paragraph 131.35(g), "General Classification", assigns designated uses to all waters not receiving use designations by name (for example, tributary streams) and establishes rules for assigning use designations to impoundments. All waters not covered by these rules or whose uses are not specifically designated are established as Class II. This latter provision is the same as in the Tribes' standards.

Paragraph 131.35(h) contains the specific use designations. EPA is proposing the identical use designations as those made by the Tribes except for waters designated Class IV. Class IV is not a fishable-swimmable classification. Until the Tribes provide a use attainability analysis for each of these segments, the use will be established as Class III. Even though Class III waters are only designated for secondary contact recreation, the bacteriological and other criteria applicable to these waters are suitable for swimming. Therefore, EPA is treating this classification as fishable-swimmable.

C. Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a Regulatory Flexibility Analysis for all

proposed regulations that have a significant impact on a substantial number of small entities. EPA has determined that because of the small area and number of people affected, and because a Tribal regulation is already in place which is essentially equivalent in stringency to this rule, there will be no significant adverse impact on small entities caused by the subsequent promulgation of this rule.

D. Executive Order 12291

Under E.O. 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of preparing a Regulatory Impact Analysis. EPA has determined that this rule is not major and that no Regulatory Impact Analysis is required. Also, as required by Executive Order 12291 this proposed rule has been reviewed by the Office of Management and Budget. Any comments from OMB to EPA and any response to those comments are available for public inspection through contacting the person listed at the beginning of this notice.

E. Paperwork Reduction Act

There are no significant information collection provisions in this rule. Therefore, there is no requirement for approval of an additional ICR by OMB for the Paperwork Reduction Act of 1980.

List of Subjects in 40 CFR Part 131

Indian reservation water quality standards, Water pollution control, Water quality standards.

Date: July 6, 1988.

Lee M. Thomas,

Administrator.

For the reasons set out in the SUPPLEMENTARY INFORMATION section, Part 131, Subpart D, of the Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for Part 131 continues to read as follows:

Authority: Clean Water Act, Pub. L. 92-500, as amended; 33 U.S.C. 1251 *et seq.*

2. By adding a new § 131.35 to read as follows:

§ 131.35 Colville Confederated Tribes Indian Reservation.

The water quality standards applicable to the waters within the Colville Indian Reservation, located in the State of Washington.

(a) *Background.* (1) It is the purpose of these Federal water quality standards to prescribe minimum water quality requirements for the surface waters located within the exterior boundaries of the Colville Indian Reservation to ensure compliance with section 303(c) of the Clean Water Act.

(2) The Colville Confederated Tribes have a primary interest in the protection, control, conservation, and utilization of the water resources of the Colville Indian Reservation. Water quality standards have been enacted into tribal law by the Colville Business Council of the Confederated Tribes of the Colville Reservation, as the *Colville Water Quality Standards Act,* CTC Title 33 (Resolution No. 1984–526 (August 6, 1984) *as amended* by Resolution No. 1985–20 (January 18, 1985)).

(b) *Territory covered.* The provisions of these water quality standards shall apply to all surface waters within the exterior boundaries of the Colville Indian Reservation.

(c) *Applicability, administration and amendment.* (1) The water quality standards in this section shall be used by the Regional Administrator for establishing any water quality based National Pollutant Discharge Elimination System Permit (NPDES) for point sources on the Colville Confederated Tribes Reservation.

(2) General Policies, as defined in § 131.13 of this part, may be implemented by the Regional Administrator for the Reservation. However, opportunity for public hearings in conjunction with that provided pursuant to the NPDES Regulations (40 CFR Parts 122, 124 and 125) will be provided by EPA for all such actions.

(3) Amendments to this section at the request of the Tribe shall proceed in the following manner.

(i) The requested amendment shall first be duly approved by the Confederated Tribes of the Colville Reservation (and so certified by the Tribes' Legal Counsel) and submitted to the Regional Administrator.

(ii) The requested amendment shall be reviewed by EPA (and by the State of Washington, if the action would affect a boundary water).

(iii) If deemed in compliance with the Clean Water Act, EPA will propose and promulgate an appropriate change to this section.

(4) Amendment of this section at EPA's initiative will follow consultation with the Tribe and other appropriate entities. Such amendments will then follow normal EPA rulemaking procedures.

(5) All other applicable provisions of this Part 131 shall apply on the Colville Confederated Tribes Reservation. Special attention should be paid to §§ 131.6, 131.10, 131.11 and 131.20 for any amendments to these standards to be initiated by the Tribe.

(6) All numeric criteria contained in this section apply at all instream flow rates greater than or equal to that flow rate calculated as the minimum 7-consecutive day average flow with a recurrence frequency of once in ten years (7Q10); qualitative criteria (§ 131.35(e)(3)) apply regardless of flow. The 7Q10 low flow shall be calculated using methods recommended by the U.S. Geological Survey.

(d) *Definitions.* (1) "Acute toxicity" means the 96-hour LC_{50}; that is, the concentration of a constituent that causes lethality to 50% of the test organisms over a 96-hour exposure period.

(2) "Background conditions" means the biological, chemical, and physical conditions of a water body, upstream from the point or non-point source discharge under consideration. Background sampling location in an enforcement action will be upstream from the point of discharge, but not upstream from other inflows. If several discharges to any water body exist, and an enforcement action is being taken for possible violations to the standards, background sampling will be undertaken immediately upstream from each discharge.

(3) "Ceremonial and Religious water use" means activities involving traditional Native American spiritual practices which involve, among other things, primary (direct) contact with water.

(4) "Chronic Toxicity" means the lowest concentration of a constituent causing observable effects (i.e., considering lethality, growth, reduced reproduction, etc.) over a relatively long period of time, usually a 28-day test period for small fish test species.

(5) "Council" or "Tribal Council" means the Colville Business Council of the Colville Conferated Tribes.

(6) "Geometric mean" means the "nth" root of a product of "n" factors.

(7) "Mean retention time" means the time obtained by dividing a reservoir's mean annual minimum total storage by the non-zero 30-day, ten-year low-flow from the reservoir.

(8) "Mixing Zone" or "dilution zone" means a limited area or volume of water where initial dilution of a discharge takes place; and where numeric water quality criteria can be exceeded but acutely toxic conditions are prevented from occurring.

(9) "pH" means the negative logarithm of the hydrogen ion concentration.

(10) "Primary contact recreation" means activities where a person would have direct contact with water to the point of complete submergence, including but not limited to skin diving, swimming, and water skiing.

(11) "Regional Administrator" means the Administrator of EPA's Region X.

(12) "Reservation" means the Colville Indian Reservation established on July 2, 1872 by Executive Order and presently containing 1,389,000 acres more or less.

(13) "Secondary contact recreation" means activities where a person's water contact would be limited to the extent that bacterial infections of eyes, ears, respiratory, or digestive systems or urogenital areas would normally be avoided (such as wading or fishing).

(14) "Surface water" means all water above the surface of the ground within the exterior boundaries of the Colville Indian Reservation including but not limited to lakes, ponds, reservoirs, artificial impoundments, streams, rivers, springs, seeps and wetlands.

(15) "Temperature" means water temperature expressed in degrees Celsius (°C).

(16) "Total dissolved solids" (TDS) means the total filterable residue that passes through a standard glass fiber filter disk and remains after evaporation and drying to a constant weight at 180 °C. It is considered to be measure of the dissolved salt content of the water.

(17) "Toxicity" means acute and/or chronic toxicity.

(18) "Tribe" or "Tribes" means the Colville Confederated Tribes.

(19) "Turbidity" means the clarity of water expressed as nephelometric turbidity units (NTU) and measured with a calibrated turbidimeter.

(20) "Wildlife habitat" means the waters and surrounding land areas of the Reservation used by fish, other aquatic life and wildlife at any stage of their life history or activity.

(e) *General considerations.* The following general guidelines shall apply to the water quality standards and classifications set forth in the use designation Sections.

(1) *Classification boundaries.* At the boundary between waters of different classifications, the water quality standards for the higher classification shall prevail.

(2) *Antidegradation policy.* This antidegradation policy shall be applicable to all surface waters of the Reservation.

(i) Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(ii) Where the quality of the waters exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the Regional Administrator finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Tribes' continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the Regional Administrator shall assure water quality adequate to protect existing uses fully. Further, the Regional Administrator shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

(iii) Where high quality waters are identified as constituting an outstanding national or reservation resource, such as waters within areas designated as unique water quality management areas and waters otherwise of exceptional recreational or ecological significance, and are designated as special resource waters, that water quality shall be maintained and protected.

(iv) In those cases where potential water quality impairment associated with a thermal discharge is involved, this antidegradation policy's implementing method shall be consistent with section 316 of the Clean Water Act.

(3) *Aesthetic qualities.* All waters within the Reservation, including those within mixing zones, shall be free from substances, attributable to wastewater discharges or other pollutant sources, that:

(i) Settle to form objectionable deposits;

(ii) Float as debris, scum, oil, or other matter forming nuisances;

(iii) Produce objectionable color, odor, taste, or turbidity;

(iv) Cause injury to, are toxic to, or produce adverse physiological responses in humans, animals, or plants; or

(v) Produce undesirable or nuisance aquatic life.

(4) *Analytical methods.* (i) The analytical testing methods used to measure or otherwise evaluate compliance with water quality standards shall to the extent practicable, be in accordance with the "Guidelines Establishing Test Procedures for the Analysis of Pollutants" (40 CFR Part 136). When a testing method is not available for a particular substance, the most recent edition of "Standard Methods for the Examination of Water and Wastewater" (published by the American Public Health Association, American Water Works Association, and the Water Pollution Control Federation) and other or superseding methods published and/or approved by EPA shall be used.

(f) *General water use and criteria classes.* The following criteria shall apply to the various classes of surface waters on the Colville Indian Reservation:

(1) *Class I (Extraordinary)*—(i) *Designated uses.* The designated uses include, but are not limited to, the following:

(A) Water supply (domestic, industrial, agricultural).

(B) Stock watering.

(C) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting.

(D) Wildlife habitat.

(E) Ceremonial and religious water use.

(F) Recreation (primary contact recreation, sport fishing, boating and aesthetic enjoyment).

(G) Commerce and navigation.

(ii) *Water quality criteria.* (A) Bacteriological Criteria—The geometric mean of the enterococci bacteria densities in samples taken over a 30 day period shall not exceed 8 per 100 milliliters, nor shall any single sample exceed an enterococci density of 35 per 100 milliliters. These limits are calculated as the geometric mean of the collected samples approximately equally spaced over a thirty day period.

(B) Dissolved oxygen—The dissolved oxygen shall exceed 9.5 mg/l.

(C) Total dissolved gas—concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(D) Temperature—shall not exceed 16.0°C due to human activities. Temperature increases shall not, at any time, exceed $t=23/(T+5)$.

(*1*) When natural conditions exceed 16.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C.

(*2*) For purposes hereof, "t" represents the permissive temperature change across the dilution zone; and "T" represents the highest existing temperature in this water classification outside of any dilution zone.

(3) Provided that temperature increase resulting from nonpoint source activities shall not exceed 2.8°C, and the maximum water temperature shall not exceed 16.3°C.

(E) pH shall be within the range of 6.5 to 8.5 with a human-caused variation of less than 0.2 units.

(F) Turbidity shall not exceed 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU.

(G) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those of public health significance, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect designated water uses.

(2) *Class II (Excellent).* (i) *Designated uses.* The designated uses include but are not limited to, the following:

(A) Water supply (domestic, industrial, agricultural).

(B) Stock watering.

(C) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting; crayfish rearing, spawning, and harvesting.

(D) Wildlife habitat.

(E) Ceremonial and religious water use.

(F) Recreation (primary contact recreation, sport fishing, boating and aesthetic enjoyment).

(G) Commerce and navigation.

(ii) *Water quality criteria.* (A) Bacteriological Criteria—The geometric mean of the enterococci bacteria densities in samples taken over a 30 day period shall not exceed 16/100 ml, nor shall any single sample exceed an enterococci density of 75 per 100 milliliters. These limits are calculated as the geometric mean of the collected samples approximately equally spaced over a thirty day period.

(B) Dissolved oxygen—The dissolved oxygen shall exceed 8.0 mg/l.

(C) Total dissolved gas—concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(D) Temperatnre—shall not exceed 18.0°C due to human activities. Temperature increases shall not, at any time, exceed $t=28/(T+7)$.

(1) When natural conditions exceed 18.0°C no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C.

(2) For purposes hereof, "t" represents the permissive temperature change across the dilution zone; and "T" represents the highest existing temperature in this water classification outside of any dilution zone.

(3) Provided that temperature increase resulting from non-point source activities shall not exceed 2.8°C, and the maximum water temperature shall not exceed 18.3°C.

(E) pH shall be within the range of 6.5 to 8.5 with a human-caused variation of less than 0.5 units.

(F) Turbidity shall not exceed 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU.

(G) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those of public health significance, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect designated water uses.

(3) *Class III (Good)*—(i) *Designated uses.* The designated uses include but are not limited to, the following:

(A) Water supply (industrial, agricultural).

(B) Stock watering.

(C) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting, crayfish rearing, spawning, and harvesting.

(D) Wildlife habitat.

(E) Recreation (secondary contact recreation, sport fishing, boating and aesthetic enjoyment).

(F) Commerce and navigation.

(ii) Water quality criteria.

(A) Bacteriological Criteria—The geometric mean of the enterococci bacteria densities in samples taken over a 30 day period shall not exceed 33/100 ml, nor shall any single sample exceed an enterococci density of 150 per 100 milliliters. These limits are calculated as the geometric mean of the collected samples approximately equally spaced over a thirty day period.

(B) Dissolved oxygen.

	Early life stages [1] [2]	Other life stages
7 day mean	9.5 (6.5)	[3] NA
1 day minimum [4]	8.0 (5.0)	6.5

[1] These are water column concentrations recommended to achieve the required intergravel dissolved oxygen concentrations shown in parentheses. The 3 mg/L differential is discussed in the criteria document. For species that have early life stages exposed directly to the water column, the figures in parentheses apply.

[2] Includes all embryonic and larval stages and all juvenile forms to 30-days following hatching.

[3] NA (not applicable)

[4] All minima should be considered as instantaneous concentrations to be achieved at all times.

(C) Total dissolved gas concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(D) Temperature shall not exceed 21.0 °C due to human activities. Temperature increases shall not, at any time, exceed $t=34(T+9)$.

(1) When natural conditions exceed 21.0°C no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3 °C.

(2) For purposes hereof, "t" represents the permissive temperature change across the dilution zone; and "T" represents the highest existing temperature in this water classification outside of any dilution zone.

(3) Provided that temperature increase resulting from nonpoint source activities shall not exceed 2.8 °C, and the maximum water temperature shall not exceed 21.3 °C.

(E) pH shall be within the range of 6.5 to 8.5 with a human-caused variation of less than 0.5 units.

(F) Turbidity shall not exceed 10 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 20 percent increase in turbidity when the background turbidity is more than 50 NTU.

(G) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those or public health significant, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect designated water uses.

(4) *Class IV (Fair)*—(i) *Designated uses.* The designated uses include but are not limited to, the following:

(A) Water supply (industrial).

(B) Stock watering.

(C) Fish (salmonid and other fish migration).

(D) Recreation (secondary contact recreation, sport fishing, boating and aesthetic enjoyment).

(E) Commerce and navigation.

(ii) *Water quality criteria.* (A) Dissolved oxygen.

	During periods of salmonid and other fish migration	During all other time periods
30 day mean	6.5	5.5
7 day mean	[1] NA	[1] NA
7 day mean minimum	5.0	4.0
1 day minimum [2]	4.0	3.0

[1] NA (not applicable).

[2] All minima should be considered as instantaneous concentrations to be achieved at all times.

(B) Total dissolved gas—concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(C) Temperature shall not exceed 22.0 °C due to human activities. Temperature increases shall not, at any time, exceed $t=20/(T+2)$.

(*1*) When natural conditions exceed 22.0 °C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3 °C.

(*2*) For purposes hereof, "t" represents the permissive temperature change across the dilution zone; and "T" represents the highest existing temperature in this water classification outside of any dilution zone.

(D) pH shall be within the range of 6.5 to 9.0 with a human-caused variation of less than 0.5 units.

(E) Turbidity shall not exceed 10 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 20 percent increase in turbidity when the background turbidity is more than 50 NTU.

(F) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those of public health significance, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect designated water uses.

(5) *Lake Class*—(i) *Designated uses.* The designated uses include but are not limited to, the following:

(A) Water supply (domestic, industrial, agricultural).

(B) Stock watering.

(C) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting crayfish rearing, spawning, and harvesting.

(D) Wildlife habitat.

(E) Ceremonial and religious water use.

(F) Recreation (primary contact recreation, sport fishing, boating and aesthetic enjoyment).

(G) Commerce and navigation.

(ii) *Water quality criteria.*

(A) Bacteriological Criteria—The geometric mean of the enterococci bacteria densities in samples taken over a 30 day period shall not exceed 33/100 ml, nor shall any single sample exceed an enterococci density of 150 per 100 milliliters. These limits are calculated as the geometric mean of the collected samples approximately equally spaced over a thirty day period.

(B) Dissolved oxygen—no measurable decrease from natural conditions.

(C) Total dissolved gas concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(D) Temperature—no measurable change from natural conditions.

(E) pH—no measurable change from natural conditions.

(F) Turbidity shall not exceed 5 NTU over natural conditions.

(G) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those which may affect public health, the natural aquatic environment, or the desirability of the water for any use.

(6) *Special Resource Water Class (SRW)*—(i) *General characteristics.* These are fresh or saline waters which comprise a special and unique resource to the Reservation. Water quality of this class will be varied and unique as determined by the Regional Administrator in cooperation with the Tribes.

(ii) *Designated uses.* The designated uses include, but are not limited to, the following:

(A) Wildife habitat.

(B) Natural foodchain maintenance.

(iii) *Water quality criteria.* (A) Enterococci bacteria densities shall not exceed natural conditions

(B) Dissolved oxygen—shall not show any measurable decrease from natural conditions.

(C) Total dissolved gas shall not vary from natural conditions.

(D) Temperature—shall not show any measurable change from natural conditions.

(E) pH shall not show any measurable change from natural conditions.

(F) Settleable solids shall not show any change from natural conditions.

(G) Turbidity shall not exceed 5 NTU over natural conditions.

(H) Toxic, radioactive, or deleterious material concentrations shall not exceed those found under natural conditions.

(g) *General classifications.* General classifications applying to various surface water bodies not specifically classified under § 131.35(h) are are follows:

(1) All surface waters that are tributaries to Class I waters are classified Class I, unless otherwise classified.

(2) Except for those specifically classified otherwise, all lakes with existing average concentrations less than 2000 mg/L TDS and their feeder streams on the Colville Indian Reservation are classified as Lake Class and Class I, respectively.

(3) All lakes on the Colville Indian Reservation with existing average concentrations of TDS equal to or exceeding 2000 mg/L and their feeder streams are classified as Lake Class and Class I respectively unless specifically classified otherwise.

(4) All reservoirs with a mean detention time of greater than 15 days are classified Lake Class.

(5) All reservoirs with a mean detention time of 15 days or less are classified the same as the river section in which they are located.

(6) All reservoirs established on preexisting lakes are classified as Lake Class.

(7) All wetlands are assigned to the Special Resource Water Class.

(8) All other waters not specifically assigned to a use classification of the reservation are classified as Class II.

(h) *Specific classifictions.* Specific classifications for surface waters of the Colville Indian Reservation are as follows:

(1) *Streams:*

Alice Creek	Class III
Anderson Creek	Class III
Armstrong Creek	Class III
Barnaby Creek	Class II
Bear Creek	Class III
Beaver Dam Creek	Class II
Bridge Creek	Class II
Brush Creek	Class III
Buckhorn Creek	Class III
Cache Creek	Class III
Canteen Creek	Class I
Capoose Creek	Class III
Cobbs Creek	Class III
Columbia River from Chief Joseph Dam to Wells Dam	Class II
Columbia River from northern Reservation boundary to Grand Coulee Dam (Roosevelt Lake)	Class I
Columbia River from Grand Coulee Dam to Chief Joseph Dam	Class II
Cook Creek	Class I
Copper Creek	Class III
Cornstalk Creek	Class III
Cougar Creek	Class I
Coyote Creek	Class II
Deerhorn Creek	Class III [1]
Dick Creek	Class III
Dry Creek	Class I
Empire Creek	Class III
Faye Creek	Class I
Forty Mile Creek	Class III
Gibson Creek	Class I
Gold Creek	Class II
Granite Creek	Class II
Grizzly Creek	Class III
Haley Creek	Class III [1]
Hall Creek	Class II
Hall Creek, West Fork	Class I
Iron Creek	Class III
Jack Creek	Class III
Jerred Creek	Class I
Joe Moses Creek	Class III [1]
John Tom Creek	Class III
Jones Creek	Class I

Kartar Creek	Class III
Kincaid Creek	Class III [1]
King Creek	Class III [1]
Klondyke Creek	Class I
Lime Creek	Class III
Little Jim Creek	Class III
Little Nespelem	Class II
Louie Creek	Class III
Lynx Creek	Class II
Minila Creek	Class III
McAllister Creek	Class III
Meadow Creek	Class III
Mill Creek	Class II
Mission Creek	Class III [1]
Nespelem River	Class II
Nez Perce Creek	Class III
Nine Mile Creek	Class II
Nineteen Mile Creek	Class III
No Name Creek	Class II
North Nanamkin Creek	Class III
North Star Creek	Class III
Okanogan River from Reservation north boundary to Columbia River	Class II
Olds Creek	Class I
Omak Creek	Class II
Onion Creek	Class II
Parmenter Creek	Class III [1]
Peel Creek	Class III [1]
Peter Dan Creek	Class III [1]
Rock Creek	Class I
San Poil River	Class I
Sanpoil, River West Fork	Class II
Seventeen Mile Creek	Class III
Silver Creek	Class III
Sitdown Creek	Class III
Six Mile Creek	Class III [1]
South Nanamkin Creek	Class III
Spring Creek	Class III
Stapaloop Creek	Class III
Stepstone Creek	Class III
Stranger Creek	Class II
Strawberry Creek	Class III
Swimptkin Creek	Class III
Three Forks Creek	Class I
Three Mile Creek	Class III [1]
Thirteen Mile Creek	Class II
Thirty Mile Creek	Class II
Trail Creek	Class III
Twentyfive Mile Creek	Class III
Twentyone Mile Creek	Class III
Twentythree Mile Creek	Class III
Wannacot Creek	Class III
Wells Creek	Class I
Whitelaw Creek	Class III [1]
Wilmont Creek	Class II
(2) *Lakes:*	
Apex Lake	LC
Big Goose Lake	LC
Bourgeau Lake	LC
Buffalo Lake	LC
Cody Lake	LC
Crawfish Lakes	LC
Camille Lake	LC
Elbow Lake	LC
Fish Lake	LC
Gold Lake	LC
Great Western Lake	LC
Johnson Lake	LC
LaFleur Lake	LC
Little Goose Lake	LC
Little Owhi Lake	LC
McGinnis Lake	LC
Nicholas Lake	LC
Omak Lake	SRW
Owhi Lake	SRW
Penley Lake	SRW
Rebecca Lake	LC
Round Lake	LC
Simpson Lake	LC
Soap Lake	SRW
Sugar Lake	LC
Summit Lake	LC
Twin Lakes	SRW

[1] The Tribe has adopted a class IV use designation for these waters. EPA will likewise designate these waters as class IV if the Tribe provides adequate use attainability analyses prior to final promulgation of these standards.

[FR Doc. 88-15674 Filed 7-14-88; 8:45 am]

BILLING CODE 6560-50-M

Friday
July 15, 1988

Part V

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Part 367

Independent Living Services for Older Blind Individuals; Final Regulations

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Part 367

Independent Living Services for Older Blind Individuals

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary adds a new part to implement Title VII, Part C of the Rehabilitation Act of 1973, as amended. This program authorizes grants to designated State units for projects that provide independent living services for older blind individuals.

These regulations include information about the kinds of project activities supported under this program, the application requirements, and the selection criteria for evaluating applications.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of §§ 367.20 and 367.21. Sections 367.20 and 367.21 will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Judith Miller Tynes, Rehabilitation Services Administration, U.S. Department of Education, Mary E. Switzer Building, Room 3326, (M/S 2312) 330 C Street SW., Washington, DC 20202; (202) 732–1346.

SUPPLEMENTARY INFORMATION: The regulations also contain post-award requirements that relate to permissible methods of providing project services and mandatory confidentiality of client information.

On January 29, 1988, the Secretary published a notice of proposed rulemaking for this program in the **Federal Register** (53 FR 2702). Except for minor editorial and technical revisions, there are only four differences between the NPRM and these final regulations, as indicated below.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, twenty-one (21) parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the proposed regulations since publication of the NPRM follows.

Issues are grouped according to subject. Technical and other minor changes are not addressed. Four changes have been made to the proposed regulations. First, language has been added to § 367.2 to clarify that the designated State unit that is authorized to provide rehabilitation services to blind individuals is the agency eligible for assistance under this program. Second, language has been added to § 367.10 requiring an applicant for assistance under this program to submit an assurance that it has been designated as the sole State agency authorized to provide rehabilitation services to blind individuals. Third, the word "aging" has been added to the selection criterion in § 367.21(a)(2) to avoid duplication of otherwise available resources and foster coordination among service providers. Fourth, the word "older" has been added to the selection criterion in § 367.21(b)(6) to encourage applicants to include *older* blind individuals (the target population for this program) in the planning and conduct of program activities. However, these last two changes to the selection criteria in § 367.21 (a)(2) and (b)(6) will not be effective until FY 1989 awards are made.

Process for Reviewing Grants

Comments: Two commenters stated that procedures for conducting peer review and for selecting peer review panels should be included in the regulations.

Discussion: The procedures for selecting review panels and new projects to be funded are contained in 34 CFR Part 75, Subpart D of the Education Department General Administrative Regulations. Part 75 is made fully applicable to this program through § 367.4(a) of these regulations.

Changes: None.

Discrimination in the Delivery of Services

Comments: One commenter requested that § 367.21(b)(5) be expanded to prohibit discrimination in the delivery of services to otherwise qualified individuals based upon age or employment potential.

Discussion: The Secretary believes that § 367.21(b)(5), which requires applicants to describe how they will ensure that project participants are selected without regard to age or handicaps, addresses the commenter's concern about non-discrimination in the delivery of project services.

Changes: None.

Distribution of Part C Funds on a Formula Grant Basis

Comments: The Secretary received many comments requesting the Rehabilitation Services Administration to consider allocating funds to States on a formula basis. Some commenters recommended using population as the sole criterion, while others suggested a straight formula or a combination formula-competitive grant program with a minimum allotment for each State with the remainder to be distributed competitively.

Discussion: Section 721(a) of the Act establishes this program as a discretionary grant program by giving the Secretary the discretion to make grants for the purposes stated in the statute. The Secretary is not legally authorized to change this program to a formula grant program.

Changes: None.

Eligibility for an Award

Comments: The Secretary received many comments on the proposed provision in § 367.2 that states that any designated State unit is eligible for an award under this program. Some commenters felt strongly that the blind agency in a State with a separate general agency should have preference for an award under this program and that both agencies in a State should not be granted an award simultaneously.

Some commenters suggested that State agencies with prior experience in serving the legally blind (i.e., the blind agency) receive priority over any other State agency. Other commenters requested that when there are two agencies, the agency serving the blind should be the exclusive applicant for Part C funds. One commenter requested that the following phrase could be added at the end of § 367.5(b)(1): "particularly those organizational units which are specifically designated to provide vocational rehabilitation services to blind and visually impaired individuals."

Discussion: The definition of "designated State unit" in the final regulations is consistent with the definition of this term in section 7(3) of the Act. This definition must be read in concert with section 101(a)(1)(A) of the Act, which provides a State with the option of designating, in its State vocational rehabilitation services plan submitted to the Secretary, the State agency for the blind, or another agency which provides assistance or services to the blind, as the sole State agency to administer that part of the State plan under which vocational rehabilitation

services are provided for the blind, if such agency is authorized by State law to provide vocational rehabilitation services to blind individuals.

This statutory option permits a State to designate one agency to provide services to all individuals with handicaps except the blind and a second agency to provide services to the blind. The Secretary has interpreted section 101(a)(1)(A) of the Act as applicable to the State Independent Living Services Program under Title VII, Part A of the Act. (See 34 CFR 365.5(b).)

Thus, if a State designates only one State agency to deliver rehabilitation services under the above two programs to all individuals with handicaps in the State, such designated State agency is eligible to receive funding under the Independent Living Services Program for Older Blind Individuals under Title VII, Part C of the Act. However, if a State exercises its option under section 101(a)(1)(A) of the Act to designate a separate agency as the sole State agency to deliver rehabilitation services to the blind, in addition to the designated State agency that provides rehabilitation services to all other disability groups, then only the separate agency designated to provide rehabilitation services to the blind is eligible for funding under the Independent Living Services for Older Blind Individuals Program.

Changes: Two changes have been made. First, language has been added to § 367.2 to clarify that the designated State unit that is authorized to provide rehabilitation services to blind individuals is the agency eligible for assistance under this program. Second, language has been added to § 367.10 requiring an applicant for assistance under this program to submit an assurance that it has been designated as the sole State agency authorized to provide rehabilitation services to blind individuals.

RSA Grantmaking Authority

Comments: One commenter stated that the grantmaking authority for this program is vested in the Commissioner of Rehabilitation Services and not in the Secretary. References to the "Secretary" should be deleted and replaced with references to the Commissioner, with an appropriate definition added to § 367.5.

Discussion: Section 3 of the Rehabilitation Act of 1973 (Act), as amended, states that "Any reference in this Act to duties to be carried out by the Commissioner shall be considered to be a reference to duties to be carried out by the Secretary acting through the Commissioner." In addition, section 412 of the Department of Education Organization Act (DEOA), Pub. L. 96-88 (1980), states that "No delegation of functions by the Secretary * * * shall relieve the Secretary of responsibility for the administration of such functions." Finally, the definition of "Secretary" found at 34 CFR 77.1 applies to all Department programs and means, in addition to the Secretary of the Department of Education, any official or employee of the Department acting for the Secretary under a delegation of authority. Taken together, the above authorities clearly support the use of the term "Secretary" rather than the term "Commissioner" in these regulations because the Secretary is ultimately responsible for the administration of this program.

Changes: None.

Definition of an Older Blind Individual

Comments: The Secretary received many comments regarding the definition of an older blind individual as described in § 367.5(b). One commenter suggested that the definition should be consistent with each State's definition of legal blindness in providing vocational rehabilitation services as stated in the Rehabilitation Act of 1973, as amended. The commenter suggested that the term "severely visually imparied individuals" needs to be defined separately. Several commenters stated that gainful employment should be omitted from this definition.

Discussion: The definition in the final regulations is identical to the definition of "older blind individual" specified by Congress in section 721(d) of the Act and cannot be changed.

Changes: None.

Activities That May be Funded

Comments: Two commenters requested that social and recreational programs be identified as a discrete service option in § 367.3. One commenter explained that in rural states isolation can be debilitating and must be counterbalanced with social and recreational involvement for older blind and visually impaired individuals.

Another commenter said that advocacy and self-advocacy services should be added as one of the authorized activities under the program. The commenter also stated that § 367.3(f) should be changed to read "any other appropriate services designed to assist a person who is blind and coping with daily living activities, including supportive services, training or rehabilitation teaching services."

One commenter requested that § 367.21(g)(2)(vii) be amended to read "Any other needed services, such as transportation, peer support group/activities, or guide services provided to individuals with severe handicaps * * *" Another commenter stated that individual psychological services for adjustment to blindness and support services, such as counseling for families, should be added to the list.

Discussion: The list of activities in § 367.3 that may be funded under this part is not exhaustive. In addition, §367.3(f) and § 367.3(g) provide sufficient flexibility to permit the types of activities suggested, if such activities are determined appropriate for that individual or such activities will further the provision of independent living services for older blind individuals. Advocacy and self-advocacy are authorized activities to the extent that such activities are not in conflict with the anti-lobbying restrictions applicable to nonprofit organizations found in OMB Circular A-122. Because these activities are already encompassed under § 367.3 (f) and (g), it is not necessary to list them individually. Additionally, some of these activities are already included under § 367.21(g) (service comprehensiveness).

Changes: None.

Individual Written Independent Living Program

Comments: Two commenters requested that an Individual Written Independent Living Program be developed for each consumer who receives services.

Discussion: The statute does not require an Individual Written Independent Living Program for each client.

Changes: None.

Consumer Involvement

Comments: One commenter stated that States seeking Part C funds should assure consumer involvement in the process of the planning and delivery of program services.

Discussion: Under the selection criterion for evaluating proposals found at § 367.21(b)(6), the Secretary considers consumer involvement in planning for and conducting program activities.

Changes: None.

Selection Criteria Points

Comments: The Secretary received many comments requesting that more weight be assigned to the "adequacy of resources," "evaluation plan" and "service comprehensiveness" criteria and less weight to the criterion "likelihood of sustaining program." One commenter stated that such a change would add more balance to the overall review mechanism. Another commenter

requested that "likelihood of sustaining program" be eliminated altogether and that "meeting the purposes of the authorizing statute", which was used in the past, be restored. A third commenter requested that the number of points in "quality of key personnel" be increased to 20 points. The writer felt that if general agencies were not prohibited from applying for Part C funding in those States in which two agencies exist, then a change in value would benefit agencies for the blind in the competition. Another commenter requested that criteria from prior years be combined with the proposed selection criteria and that the point structure be revised.

Discussion: The Secretary believes that the number of points assigned to "likelihood of sustaining program" and the weights assigned to the other selection criteria are appropriate and do not need to be revised. The Secretary believes that the applicant's intention and capacity to continue the program after the completion of Federal project grant assistance is an appropriate and important consideration in selecting applicants to be awarded assistance under this program.

Changes: None.

Extent of Need for the Project

Comments: One commenter stated that the needs assessment in § 367.21(a)(1)(ii) should include input from agencies and organizations concerned with aging. The same commenter stated that the needs assessment in § 367.21(a)(2) should include programs and facilities for the aging.

Discussion: The final regulations do not specify the agencies that should be consulted in collecting information for the needs assessments. However, although the Secretary agrees that agencies and organizations serving the elderly are excellent sources for obtaining this information, the Secretary believes that applicants for assistance under this program will consult with such agencies and organizations without explicit direction from this Department. Congress created this program to assist older blind persons to adjust to blindness. The Secretary agrees that, in order to avoid duplication, it would be appropriate for applicants to demonstrate that services provided under this program complement or expand upon services available to older blind persons through other programs for independent living or the aging.

Changes: Section 367.21(a)(2) has been changed to include a determination of the extent to which the need for independent living services for older blind individuals is justified in terms of complementing or expanding both existing independent living and aging programs and facilities.

Plan of Operation

Comments: One commenter stated that the word "older" should be added to the selection criterion in § 367.21(b)(6).

Discussion: The Secretary agrees that the word "older" should be added to the phrase "blind individuals" in § 367.21(b)(6) of the final regulations. Adding the word "older" to this selection criterion is consistent with the purposes of this program and will encourage applicants to involve the target population of this program in the planning and conduct of program activities. Adding the word "older" establishes neither an absolute requirement nor a minimum level of participation by older blind individuals in the planning and conduct of program activities.

Changes: A change has been made to § 367.21(b)(6) by adding the word "older" immediately preceding the phrase "blind individuals." However, this last change to the selection criterion in § 367.21(b)(6) will not be effective until FY 1989 awards are made.

Budget and Cost-effectiveness

Comments: One commenter stated that programs funded under the Older Americans Act should be added to § 367.21(d)(3).

Discussion: An applicant for assistance under this program may demonstrate the cost-effectiveness of its proposed project by comparing it to programs funded under the Older Americans Act. The Secretary recognizes that many alternative services and programs authorized under other statutes could be used for comparison but are not included in the regulations. However, the Secretary does not believe it is either appropriate or necessary to list all such programs in these regulations.

Changes: None.

Service Comprehensiveness

Comments: One commenter stated that § 367.21(g) should be expanded to reflect that these programs assist the older blind individual to utilize general services as well as services which are appropriate to the individual's age.

Discussion: The Secretary anticipates that an individual will receive services tailored to that person's needs and that take into account the age and any other factors affecting his or her ability to live independently.

Changes: None.

Evaluation Plan

Comments: One commenter stated that RSA should define the concepts of quality and effectiveness as well as develop criteria for use in judging the program's expected outcomes or goals and cost-effectiveness.

Discussion: Although the Secretary believes that it may be desirable to establish specific criteria to evaluate the quality and cost-effectiveness of projects under this program, reliable and sufficient data are not available at this time to establish Federal standards.

Changes: None.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

List of Subjects in 34 CFR Part 367

Education, Independent living services, Older blind individuals, Reporting and recordkeeping requirements, Vocational rehabilitation.

(Catalog of Federal Domestic Assistance Number 84.177, Independent Living Services for Older Blind Individuals Program)

Dated: June 23, 1988.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 367 to read as follows:

PART 367—INDEPENDENT LIVING SERVICES FOR OLDER BLIND INDIVIDUALS

Subpart A—General

Sec.

367.1 What is Independent Living Services for Older Blind Individuals?
367.2 Who is eligible for an award?
367.3 What activities may the Secretary fund?
367.4 What regulations apply?
367.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

367.10 What assurances must a designated State unit submit to receive a grant?

Subpart C—How Does the Secretary Make an Award?

367.20 How does the Secretary evaluate an application?
367.21 What selection criteria does the Secretary use?
367.22 What additional factors does the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

367.30 How are services to be administered under this program?
367.31 What are the requirements pertaining to the protection, use and release of personal information?

Authority: 29 U.S.C. 796f, unless otherwise noted.

Subpart A—General

§ 367.1 What is Independent Living Services for Older Blind Individuals?

This program supports projects that provide independent living services to older blind individuals.

(Authority: 29 U.S.C. 796f)

§ 367.2 Who is eligible for an award?

Any designated State unit that is authorized to provide rehabilitation services to blind individuals is eligible for an award under this program.

(Authority: 29 U.S.C. 711(c) and 796f(a))

§ 367.3 What activities may the Secretary fund?

Authorized activities under this program include—

(a) Services to help correct blindness or visual impairment such as—

(1) Outreach services;

(2) Visual screening;

(3) Surgical or therapeutic treatment to prevent, correct, or modify disabling eye conditions;

(4) Occular prostheses; and

(5) Hospitalization related to these services;

(b) The provision of eyeglasses and other visual aids;

(c) The provision of services and equipment to assist an older blind individual to become more mobile and more self-sufficient;

(d) Mobility training, braille instruction, and other services and equipment to help an older blind individual adjust to blindness;

(e) Guide services, reader services, and transportation;

(f) Any other appropriate services designed to assist a blind person in coping with daily living activities, including supportive services or rehabilitation teaching services; and

(g) Activities that will improve or expand services for older blind individuals and help improve public understanding of the problems of those individuals.

(Authority: 29 U.S.C. 711(c) and 796f(a))

§ 367.4 What regulations apply?

The following regulations apply to Independent Living Services for Older Blind Individuals:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board).

(b) The regulations in this Part 367.

(c) The regulations in 34 CFR 365.13.

(Authority: 29 U.S.C. 711(c) and 796f)

§ 367.5 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget period
Department
EDGAR
Fiscal year
Grant period
Nonprofit
Private
Project
Project period
Public
Secretary

(b) *Other definitions.* The following definitions also apply to this part:

"Designated State unit" means either—

(1) The State agency vocational rehabilitation bureau, division, or other organizational unit that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with handicaps and that is responsible for the administration of the vocational rehabilitation program of the State agency; or

(2) The independent State commission, board, or other agency that has vocational rehabilitation, or vocational and other rehabilitation as its primary function.

(Authority: 29 U.S.C. 706(3) and 721(a))

"Independent living services for older blind individuals" means any services enumerated in § 367.3 that will assist an older blind individual to correct blindness or visual impairment or to adjust to blindness by becoming more able to care for individual needs.

(Authority: 29 U.S.C. 796f(a))

"Older blind individual" means an individual aged fifty-five or older whose severe visual impairment makes gainful employment extremely difficult to obtain but for whom independent living goals are feasible.

(Authority: 29 U.S.C. 796f(d))

Subpart B—How Does One Apply for an Award?

§ 367.10 What assurances must a designated State unit submit to receive a grant?

(a) Each applicant for assistance under this part shall submit to the Secretary an assurance that it has been designated by the State as the sole State agency authorized to provide rehabilitation services to blind individuals.

(b) Each designated State unit shall submit to the Secretary assurances that any new methods and approaches relating to the services described in § 367.3 for older blind individuals that are developed by projects under this program will be incorporated into its State plan for independent living services required by section 705 of the Act.

(Authority: 29 U.S.C. 711(c) and 796f(b))

Subpart C—How Does the Secretary Make an Award?

§ 367.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application on the basis of the criteria in § 367.21.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 29 U.S.C. 711(c) and 796f)

§ 367.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Extent of need for the project.* (20 points)

(1) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(2) The Secretary reviews each application to determine the extent that the need for independent living services for older blind individuals is justified in terms of complementing or expanding existing independent living and aging programs and facilities and the potential of the project to support the overall

mission of the State-Federal independent living program as stated in Title VII, section 701 of the Act.

(b) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(6) The extent to which the plan of operation and management includes involvement by older blind individuals in planning for and conducting of program activities.

(c) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age or handicapping condition.

(2) To determine personnel qualifications under paragraphs (c)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the scope of the project; and

(ii) Any other qualifications that pertain to the objectives of the project.

(d) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) The applicant demonstrates the cost-effectiveness of project services in comparison with alternative services and programs available to older blind individuals.

(e) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Accurately evaluate the success and cost-effectiveness of the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including accessibility of facilities, equipment and supplies.

(g) *Service comprehensiveness.* (20 points)

(1) The Secretary reviews each application to determine the extent to which effective outreach services for independent living will be provided within the project to enable older blind individuals to live more independently in the home and community.

(2) The Secretary reviews each application to determine the extent to which the availability of the following core services that will meet the independent living needs of older blind individuals with varying degrees of visual impairment are included:

(i) Orientation and mobility skills training that will enable older blind individuals to travel independently, safely and confidently in familiar and unfamiliar environments.

(ii) Skills training in braille, handwriting and typewriting or other means of communication.

(iii) Communication aids such as large print, cassette tape recorders and readers.

(iv) Training to perform daily living activities such as meal preparation, identifying coins and currency, selection of clothing, telling time and maintaining a houshold.

(v) Provision of low-vision services and aids such as magnifiers to perform reading and mobility tasks.

(vi) Family and peer counseling services to assist the older blind individual adjust emotionally to the loss of vision as well as to assist in the individual's integration into the community and its resources.

(vii) Any other needed services such as transportation or guide services provided to individuals with severe handicaps under the State-Federal independent living program authorized by 34 CFR Part 365.

(h) *Likelihood of sustaining program.* (15 points) The Secretary reviews each application to determine—

(1) The likelihood that the service program will be sustained after the completion of Federal project grant assistance;

(2) The extent to which the applicant intends to continue to operate the service program through cooperative agreements and other formal measures; and

(3) The extent to which the applicant will identify and, to the extent possible, use comparable services and benefits under other programs for which project clients might be eligible.

(Authority: 29 U.S.C. 711(c) and 796f)

§ 367.22 What additional factors does the Secretary consider?

In addition to the criteria in § 367.21, the Secretary considers the geographic distribution of projects in making an award.

(Authority: 29 U.S.C. 711(c) and 796f)

Subpart D—What Conditions Must Be Met After an Award?

§ 367.30 How are services to be administered under this program?

Each designated State unit may either directly provide independent living services under this program or it may make subgrants to other public agencies or private nonprofit organizations to provide these services.

(Authority: 29 U.S.C. 796f(c))

§ 367.31 What are the requirements pertaining to the protection, use and release of personal information?

(a) All personal information about individuals served by any project under this part, including lists of names, addresses, photographs, and records of evaluation, must be held confidential.

(b) The use of information (including records) concerning individuals must be limited to purposes directly connected with the project, including project evaluation activities. This information

may not be disclosed, directly or indirectly, other than in the administration of the project unless the consent of the agency providing the information and of the individual to whom the information applies, or the individual's representative, has been obtained in writing. However, the Secretary and other Federal or State officials responsible for enforcing legal requirements have access to this information without written consent being obtained. The final product of the project may not reveal any personal identifying information without written consent of the individual or the individual's representative.

(Authority: 29 U.S.C. 711(c))

[FR Doc. 88-15960 Filed 7-14-88; 8:45 am]

BILLING CODE 4000-01-M

federal register

Friday
July 15, 1988

Part VI

The President

Proclamation 5840—Captive Nations Week, 1988

Executive Order 12646—Establishing an Emergency Board To Investigate a Dispute Between the Port Authority Trans-Hudson Corporation and Certain of Its Employees Represented by the International Brotherhood of Electrical Workers

Federal Register
Vol. 53, No. 136
Friday, July 15, 1988

Presidential Documents

Title 3—

The President

Proclamation 5840 of July 13, 1988

Captive Nations Week, 1988

By the President of the United States of America

A Proclamation

During Captive Nations Week, we honor the courage, faith, and aspirations of the millions of people the world over who suffer under Soviet domination. They desire, seek, and deserve, as the common heritage of humanity, the liberty, justice, self-determination, and independence we Americans and all free peoples cherish. The citizens of the captive nations daily hear the mighty call of freedom and answer it boldly, sending an echo around the globe to remind totalitarians and all mankind that their voices cannot be quelled—because they are the voices of the human spirit.

Across the continents and seas, the cry for freedom rings out and the struggle for its blessings continues, in the republics of the Soviet Union, in the Baltic States and throughout Eastern Europe, in Cuba and Nicaragua, in Ethiopia and Angola, and in Vietnam, Laos, and Cambodia. It also continues in Afghanistan, despite initial Soviet withdrawal, because the Najibullah regime imposes its will upon the Afghan people. We in America, who have held high the torch of liberty for 2 centuries and more, pause during Captive Nations Week to express our solidarity with those who strive at great personal risk and sacrifice to win justice for their nations. We commemorate as well the many freedom fighters and individuals such as Polish Father Jerzy Popieluszko and Ukrainian poet Vasyl Stus who have given their lives in the imperishable cause of liberty. We cannot and will not shirk our duty and responsibility to insist on the speediest end to subjugation, persecution, and discrimination in the captive nations. We repeat our call for all governments to respect and honor the letter and the spirit of the United Nations Charter and the Helsinki Accords.

Last year's Captive Nations Week Proclamation mentioned four people in the Soviet Union imprisoned for their struggle for national rights. Now, 1 year later, two of them, both Helsinki human rights monitors, remain in internal exile—Viktoras Petkus, a Lithuanian, and Lev Lukyanenko, a Ukrainian. Another, Helsinki monitor Mart Niklus, an Estonian, is still in a labor camp. The last, Gunars Astra, Latvia's highly respected national rights activist, was released in poor health earlier this year after 19 years in Soviet labor camps. He died several months ago at 56 years of age.

America is keenly aware of, and will continue to encourage, the great tide of democratic ideas that now sweeps the globe. We cannot forget decades of tragedy, the tens of millions of lives lost, or the enormity of the suffering inflicted on the innocent. We applaud the courage and faith that have sustained countless people and kept alive the dream of freedom against unthinkable odds. Despite starvation, torture, and murder, the indomitable human spirit will outlast all oppression. We continue to stand ready to cooperate in meeting the just aspirations of the oppressed and needy of the world. We will remain forever steadfast in our commitment to speak out for those who cannot, to seek justice for those to whom it is denied, and to assist freedom-seeking peoples everywhere.

The Congress, by joint resolution approved July 17, 1959 (73 Stat. 212), has authorized and requested the President to issue a proclamation designating the third week in July of each year as "Captive Nations Week."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning July 17, 1988, as Captive Nations Week. I call upon the people of the United States to observe this week with appropriate programs, ceremonies, and activities, and I urge them to reaffirm their devotion to the aspirations of all peoples for justice, self-determination, and liberty.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of July, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-16159
Filed 7-14-88; 11:37 am]
Billing code 3195-01-M

Editorial note: For the President's remarks of July 13 on signing Proclamation 5840, see the *Weekly Compilation of Presidential Documents* (vol. 24, no. 28).

Presidential Documents

Executive Order 12646 of July 13, 1988

Establishing an Emergency Board To Investigate a Dispute Between the Port Authority Trans-Hudson Corporation and Certain of Its Employees Represented by the International Brotherhood of Electrical Workers

A dispute exists between the Port Authority Trans-Hudson Corporation and certain of its employees represented by the International Brotherhood of Electrical Workers.

The dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (the "Act").

Parties empowered by the Act have requested that the President establish an emergency board pursuant to Section 9A of the Act (45 U.S.C. Section 159a).

Section 9A(c) of the Act provides that the President, upon such a request, shall appoint an emergency board to investigate and report on the dispute.

NOW, THEREFORE, by the authority vested in me by Section 9A of the Act, it is hereby ordered as follows:

Section 1. *Establishment of Board.* There is established, effective July 13, 1988, a board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The Board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* The Board shall report its findings to the President with respect to the dispute within 30 days after the date of its creation.

Sec. 3. *Maintaining Conditions.* As provided by Section 9A(c) of the Act, from the date of the creation of the board and for 120 days thereafter, no change, except by agreement of the parties, shall be made by the carrier or the employees in the conditions out of which the dispute arose.

Sec. 4. *Expiration.* The board shall terminate upon the submission of the report provided for in Section 2 of this Order.

Ronald Reagan

THE WHITE HOUSE,
July 13, 1988.

[FR Doc. 88-16160
Filed 7-14-88; 11:41 am]
Billing code 3195-01-M

Editorial note: For a White House statement, dated July 13, on the labor dispute, see the *Weekly Compilation of Presidential Documents* (vol. 24, no. 28).

Reader Aids

Federal Register

Vol. 53, No. 136

Friday, July 15, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JULY

24921-25128.....1
25129-25300.....5
25301-25480.....6
25481-25590.....7
25591-26022.....8
26023-26216.....11
26217-26418.....12
26419-26584.....13
26585-26750.....14
26751-26986.....15

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

305.....26025
310.....26025

3 CFR

102.....25872

Proclamations:

5836.....24921
5837.....25300
5838.....25301
5839.....25479
5840.....26984

Executive Orders:

12364 (Amended by 12645).....26750
12644.....26417
12645.....26750
12646.....26986

Administrative Orders:

Presidential Determinations:
No. 88-19 of June 7, 1988.....26419
Memorandums:
May 23, 1988.....26023

4 CFR

7.....26421

5 CFR

Ch. XIV.....25129
723.....25872
930.....26562
1207.....25872
1262.....25872
2416.....25872

Proposed Rules:

890.....26781

7 CFR

2.....26217
68.....26751
210.....25303
220.....25303
226.....25303
246.....25310
250.....26217
272.....26219
273.....26219
301.....24923
905.....26585
910.....24928, 26033, 26752
945.....26752
947.....24929
981.....26423
998.....26754
1030.....26758
1126.....26226
1427.....26761
1823.....26587
1864.....26587
1900.....26398
1902.....26587
1940.....26228
1941.....26587
1942.....26587
1943.....26587
1944.....26587
1945.....26587
1951.....26587
1980.....26400

Proposed Rules:

1d.....26076
13.....26443
180.....26781
917.....26782
920.....26444
927.....24953
929.....25495
967.....25495
987.....26784
989.....25496
993.....26602
999.....25496
1030.....26369
1079.....26446
1408.....26081

8 CFR

103.....26034
214.....26230
271.....26034

9 CFR

78.....24929, 26231
92.....26425

Proposed Rules:

50.....26262
51.....26262
77.....26262
78.....26262
92.....26262
94.....25498
201.....26082
203.....26082

10 CFR

70.....26591

Proposed Rules:

2.....25345
50.....25169, 26447

12 CFR

204.....24930
549.....25129
569a.....25129
569c.....25129
606.....25481
748.....26232

Proposed Rules:

336.....26262
535.....25500
569c.....25169

13 CFR

121 26426

14 CFR

21 26036
23 26134
25 ..... 26036, 26134
27 26134
29 26134
39 ..... 25134-25140, 25315, 25317, 26038-26040, 26042-26045, 26762, 26764, 26765
71 ..... 25141, 25143, 25321, 25322, 26046, 26232, 26426
73 25323
75 25143
91 ..... 26134, 26592
97 26233
121 26134
125 26134
135 26134
1215 26235
1251 25872

Proposed Rules:

21 26086
25 26086
39 ..... 25171, 25172, 26785, 26787
71 ..... 25174, 25175, 25345-25347, 25406, 26087, 26275-26278
91 25050
221 25615
389 25615

15 CFR

4b 26235
8c 25722
371 26047
375 25144
385 25325
386 25145
399 ..... 25146, 26047

Proposed Rules:

370 26131
386 26131
801 26603

16 CFR

13 26236
305 26237

Proposed Rules:

13 25502
419 25503

17 CFR

200 25872
201 26427
240 26376

Proposed Rules:

1 26447
180 24954
229 26718
230 26718

18 CFR

2 26434
161 25240
250 25240
380 26436

Proposed Rules:

284 ..... 25628, 25629
385 ..... 25628, 25629

19 CFR

12 26238

Proposed Rules:

122 26604
175 26605

20 CFR

404 25481
416 ..... 25150, 25481

21 CFR

5 26048
74 ..... 26766, 26768
81 ..... 25127, 26766, 26768
82 ..... 26766, 26768
172 26559
193 26131
430 26712
436 26712
442 26712
510 25151
522 26559
524 26242
558 25152
561 26131
862 25050

Proposed Rules:

355 26559

22 CFR

711 25872
1510 25872

23 CFR

160 25484
645 24932
658 25484

24 CFR

511 25462
888 25326
990 25152

Proposed Rules:

125 25576
200 25434
203 25434
234 25434
964 25276
965 25348

25 CFR

179 25952

26 CFR

1 ..... 26050, 26243

Proposed Rules:

1 ..... 26279, 26448

27 CFR

19 25155
20 25155
252 25155

Proposed Rules:

4 26448
12 26448
71 26088

28 CFR

2 24933
51 25327

29 CFR

100 25872
1910 26437
2610 ..... 25591, 25722
2644 24933

Proposed Rules:

1625 ..... 26788, 26789
1910 ..... 24956, 26790
1915 26790
1918 26790
1953 26797

30 CFR

7 25569
18 25569
250 26066
251 25242
280 25242
762 26582
842 26728
843 26728
901 25486
905 26570
934 26246
935 26592

Proposed Rules:

7 25569
25 25569
75 26449
202 26942
203 26942
206 26942
212 26942
250 25349
915 26606
917 24957
934 26280
942 26566

31 CFR

25 25422

32 CFR

199 25327
266 26246
292 25157
706 ..... 25487, 25488
1636 25328

33 CFR

1 25118
3 ..... 24934, 25118
4 24936
19 25118
26 25118
54 25118
67 25118
81 25118
89 25118
100 ..... 24936, 24937, 26246, 26247, 26770
114 25118
116 25118
117 ..... 25118, 26248, 26249
130 25118
131 25118
132 25118
135 25118
136 25118
137 25118
140 25118
144 25118
148 25118
149 25118
150 25118
153 25118
154 25118
156 25118
157 25118
159 25118
160 25118
164 25118
165 26771
174 25118
179 25118
181 25118
183 25118

Proposed Rules:

100 ..... 26281, 26449
117 24958
166 ..... 24959, 26282

34 CFR

222 26772
367 26976
562 24937
600 25489
602 25088
603 25088

Proposed Rules:

200 26214
316 26190
318 26190

36 CFR

9 25160
251 26594
1208 25872

38 CFR

1 25489
4 24938
15 25872

39 CFR

111 26249

40 CFR

52 ..... 25329, 25330, 26250-26256
85 25331
180 26438-26440
185 26131
186 26131
600 25331

Proposed Rules:

52 ..... 25176, 25177, 25509, 26607, 26609
65 24938
81 25178
131 26968
141 25108
142 25108
156 25970
170 25970
180 ..... 26450, 26452, 26453
261 ..... 26283, 26455
440 24939
761 25049
796 25049

Proposed Rules:

52 24964
180 25049
300 26090

41 CFR

101-6 26773
101-26 26595
101-41 ..... 25162, 26779

Proposed Rules:

201-1 26610
201-30 26610
201-32 26610

42 CFR

405 26067

Proposed Rules:
50 25631
411 26712
412 25240
1003 25240

43 CFR

Proposed Rules:
3480 26942

44 CFR

16 25872
59 25332
60 25332
62 26559
64 25591
Proposed Rules:
300 26746

45 CFR

31 25592
85 ..... 25595, 26559
Proposed Rules:
613 26611

46 CFR

Proposed Rules:
4 25926
5 25926
16 25926
581 26091

47 CFR

1 26596
22 26073
43 24940
63 24940
65 26074
73 ..... 24940, 24942, 25167, 25168, 25332-25337, 25490, 26074, 26075, 26597, 26598
90 25607
Proposed Rules:
15 26092
22 ..... 25633, 26288
36 24964
73 ..... 24966, 24967, 25178, 25350-25352, 26612-26615, 26798

48 CFR

Ch. 6 26158
Proposed Rules:
15 25572
42 25102
45 25084
52 25102
53 25085
542 26092
701 25634
715 25634
717 25634
752 25634
1452 26560
1480 26560
1801 26932
1804 26932
1805 26932
1807 26932
1808 26932
1815 26932
1816 26932
1817 26932
1822 26932
1824 26932
1828 26932
1832 26932
1839 26932
1842 26932
1845 26932
1852 26932
1870 26932

49 CFR

191 24942
192 ..... 24942, 25892, 26560
193 ..... 24942, 25892, 26560
195 ..... 24942, 25892
501 26257
510 26257
511 26257
571 25337
Proposed Rules:
192 ..... 24968, 26615
193 26615
195 ..... 24968, 26615
382 25353
571 25354
653 ..... 25910, 26289
1105 24971
1152 24971

50 CFR

17 ..... 25608, 26369
20 24951
642 25611
661 26599
672 ..... 25491, 26441
674 ..... 25492, 26779
675 ..... 25493, 26599
Proposed Rules:
17 ..... 25179-25185, 25511, 26616
20 26197
23 ..... 26799, 26802
32 26461
651 26617
662 26617

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List July 14, 1988

Public Laws

are now available for the 100th Congress, 2nd Session, 1988

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 100th Congress, 2nd Session, 1988.

(Individual laws also may be purchased from the Superintendent of Documents, Washington, DC 20402-9328. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws and prices).

Superintendent of Documents Subscriptions Order Form

Order Processing Code
*6216

Charge your order. It's easy!

☐ **YES,** please send me _____ subscriptions to **PUBLIC LAWS** for the 100th Congress, 2nd Session, 1988 for $104 per subscription.

1. The total cost of my order is $_____ . All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

3. **Please choose method of payment:**

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐

☐ VISA, CHOICE or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

1/88

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371